SUPREME COURT, U.S.
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No. 82-1260

In the

Supreme Court of the United States

OCTOBER TERM, 1982

COPPERWELD CORPORATION and
REGAL TUBE COMPANY, Petitioners,

vs.

INDEPENDENCE TUBE CORPORATION, Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit

JOINT APPENDIX

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Dated: August 25, 1983

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PETITION FOR CERTIORARI FILED JANUARY 28, 1983.
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November 12, 1976—Complaint of Independence Tube Corporation.

December 15, 1976—Answer of defendant Copperweld Corporation and Counterclaim against Independence Tube Corporation.

January 25, 1977—Answer of defendant Regal Tube Company and Counterclaim against Independence Tube Corporation.

May 24, 1977—Amended Complaint of Independence Tube Corporation.

June 16, 1977—Answers of defendants Copperweld Corporation and Regal Tube Company and Counterclaims against Independence Tube Company and David F. Grohne.

September 15, 1977—Order permitting Copperweld Corporation to name David F. Grohne as additional counterdefendant.

February 22, 1980—Order permitting Independence Tube Corporation to voluntarily dismiss Count II of Amended Complaint (Section 2 claim).

November 14, 1980—Order entering stipulation dismissing Phillip H. Smith as defendant.

February 17, 1981—Jury returns verdict on special interrogatories.

March 6, 1981—Jury returns verdict on damage award.

April 15, 1981—Motions of Copperweld Corporation and Regal Tube Company for judgment notwithstanding the verdict or, in the alternative, for a new trial.

May 27, 1981—District Court's judgment order entering judgment *nunc pro tunc* March 6, 1981 for Independence

Tube Company and against Copperweld Corporation and Regal Tube Company in the amount of $7,512,027 with interest, attorneys' fees and costs.

June 22, 1981—District Court's memorandum opinion denying defendants' motions for judgment notwithstanding the verdict and a new trial.

June 23, 1981—Notice of Appeal.

July 16, 1981—Amended Notice of Appeal.

November 2, 1981—Brief for Appellants.

December 28, 1981—Brief for Appellees.

January 19, 1982—District Court's order awarding Independence Tube Corporation attorneys' fees and costs.

February 10, 1982—Reply Brief for Appellants.

March 31, 1982—Oral Argument.

June 21, 1982—District Court's order awarding Independence Tube Corporation attorneys' fees and costs in the amount of $1,814,672.70.

July 16, 1982—District Court's order further amending award of attorneys' fees and costs to provide interest from January 19, 1982.

October 1, 1982—Seventh Circuit's Opinions affirming the District Court's judgments and jury verdicts.

October 15, 1982—Petition of Copperweld Corporation and Regal Tube Company for Rehearing and Suggestion that Rehearing be *En Banc*.

November 1, 1982—Seventh Circuit order denying Petition for Rehearing and Suggestion for Rehearing *En Banc*.

December 21, 1982—Seventh Circuit order granting appellants' unopposed motion to enter judgment on the award of attorneys' fees and costs and consolidating that judgment with judgment on the merits.

COPPERWELD CORPORATION
STRUCTURAL STRATEGY CENTER
TOTAL MARKET VOLUME
Thousands of Tons

	Actual						Projected											
Markets	1972	%	1973	%	1974	%	1975	%	1976	%	1977	%	1978	%	1979	%	1980	%
1. Structural Shapes	4726		5882	24	5176	−12	5383	4	5598	4	5822	4	6054	4	6297	4	6548	4
2. Structural Pipe & Tube	850		950	11	1028	8	1100	7	1177	7	1260	7	1347	7	1441	7	1542	7
3.																		
4.																		
5.																		
6.																		
7.																		
8.																		
9.																		
10.																		
Total	5624		6843	21	6204	−10	6483	4	6775	4	7082	4	7401	4	7738	4	8090	

Critical Assumptions As the structural tube industry as a whole promotes the use of structural tubing in various industries, the conversion of other structural shapes will progress at an ever expanding rate, provided we are mindful of and will price near competitive shapes.

Data Source AISI 10P Reports; WSTI Quarterly reports by all members.

Note: % is the year-to-year change in volume for each market.

PLAINTIFF'S EXHIBIT 20

COPPERWELD CORPORATION
STRUCTURAL STRATEGY CENTER
COMPETITIVE MARKET VOLUME

Thousands of Tons

	Actual						Projected											
Markets	1972	%	1973	%	1974	%	1975	%	1976	%	1977	%	1978	%	1979	%	1980	%
1. Farm Equipment	120		133	11	140	5.2	147	5	150	2	153	2	156	2	161	3	166	3
2. Sve. Ctr. Stock	409		434	6	453	4.3	487	7.5	511	5	586	14	611	4	634	4	662	4
3. Const. Equipment	65		84	29	92	10	101	10	108	7	149	38	155	4	176	13	180	2
4. Hwy. Guard Rail	20		21	5	22	5	23	4.5	24	4	25	4	26	4	27	3.8	29	7
5. All Others	38		29	−23	43	48	53	23	74	39	98	32	124	26	135	9	168	24
6.																		
7.																		
8.																		
9.																		
10.																		
Total	625		701	12	750	7	811	8	867	7	1011	16	1072	6	1133	6	1205	6

Critical Assumptions ROPS legislation in effect October, 1976, will add up to 100,000 tons to structural markets in 1977 and 1978.

Note: % is the year-to-year change in volume for each market.

COPPERWELD CORPORATION
STRUCTURAL STRATEGY CENTER
COPPERWELD MARKET VOLUME
Thousands of Tons

	Actual						Projected											
Markets	1972	%	1973	%	1974	%	1975	%	1976	%	1977	%	1978	%	1979	%	1980	%
1. Farm Equipment	21	17	25	20	21	20	27	19	32	24	40	26	44	43	50	43	74	44
2. Mis. Ctr. Equip.	27	9	40	30	44	10	26	6	22	12	70	13	77	12	81	13	87	13
3. Const. Equipment	16	15	15	16	6	3	8	3	7	6	9	6	11	7	15	9	15	16
4. Hwy. Guard Rail	2	10	3	14	3	14	3	6	5	20	6	24	7	27	8	30	9	31
5. All Others	15	49	7	24	10	33	17	65	20	88	24	24	24	27	31	33	30	17
6.																		
7.																		
8.																		
9.																		
10.																		
Total	0000	10	100	14	86	12	79	10	136	18	169	23	190	19	204	10	317	16
% Change From Prior Year		21		21		-11		-14		97		15		6		6		6

Project Description

OSTERWELD CORPORATION
STRUCTURAL STRATEGY CENTER
COMPETITIVE PROFILE

Item / Competitor	Field Service	Quality	Range of Product	Price	Delivery	Overall Competitive Rank
1. Welded Tube Co.	0	0	0	0	0	#1 equal to Siegel
2. Unarco—Leavitt	+	–	–	+	0	2
3. Van Huffel	0	0	–	+	0	3
4. Tube & Steel (Sears)	–	0	–	+	0	4
5. Independence Tube	–	0	–	+	0	5
6. Mott Industries	–	0	–	+	0	7
7. (Additional)	0	0	–	–	0	11
8. Prudential	–	0	–	0	0	10
9. Tool-Tube	0	0	–	+	0	6
10. Jones	0	0	–	+	0	8
11. Unknown	0	0	–	+	0	9
12. Hardy	0	0	–	+	0	12
Tube-Mill Direct						
1. Jones	+	+	+	+	+	1
2. Republican	0	+	+	+	+	2
3. Steel Corp.				+	0	3

COPPERWELD CORPORATION
STRUCTURAL STRATEGY CENTER
COMPETITORS' PERFORMANCE AND RESOURCES

COMPETITORS (1974) (dollars in thousands)		PERFORMANCE AND OUTLOOK (Discuss share of market, strengths and weaknesses, strategies, resources, etc.)
First	Welded Tube Co. of Amer.	We estimate WTC share of the market to be at 18% to 20% of the market, and increasing at our expense. They have the industries broadest size range and a Vice-President and marketing staff working full time to promote this product. New mill in Philadelphia, very modern and efficient equipment in Chicago. Has broken ground for new tube mill in Birmingham, Alabama, area.
Sales	$ 65,727,000	
IBT	$ 14,376,000	
Assets Employed	$ 44,526,000	
Second	Unarco-Leavitt	Estimated Leavitt sales are 60% of Unarco's total, or over $100 million in 1974. Also have taken option on land in Columbus, Georgia and announced plans for new mill up to 8" sq. Has always been unstable prices, current range from ½" sq. × 22 ga. to 4" sq. × ¼". Could have 15% to 20% total market, but entire portion of their sales are in sizes not in our size range. 50% to 60% of Leavitt's sales are structural tubing. (2 sq. - 4 sq.). Imports and mills sizes above their current range.
Sales	$275,933,995 Total Corporate	
IBT	$ 21,099,695	
Assets Employed	$ 94,501,353	
Third	Tube & Steel (Sonco)	Canadian importer with size range 2½" sq. × 8 ga. to 6 sq. × ¼. Has been increasingly more aggressive in U.S. market in past two years. They gained substantially at our expense during shortage period of 1974, and have continued on increased sales figure. In addition to the mill in Ontario, they maintain a warehouse of import material in Mobile, Alabama. Sales is actually only the presence of sales into sale for Tube & Steel. Tube & Steel also represents Prudential Steel & Tube Co. of Wales based in (to-U.S.
70,000 tons		
Sales	$ 35,000,000 (estimated)	
IBT		
Assets Employed		

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PLAINTIFF'S EXHIBIT 34

REGAL TUBE MARKETS AND PLANT LOCATION

Report to

COPPERWELD STEEL COMPANY

July 1972

C-74567

Arthur D. Little, Inc.

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I. SUMMARY

I. SUMMARY

A. PURPOSE AND SCOPE

Early this year Copperweld Steel Company acquired the Regal Tube Company of Chicago, Illinois. This acquisition was made principally to supply Copperweld's Ohio Steel Tube Division with welded structural tubing for further processing into DOM precision tube. Since the acquisition, however, Copperweld has been increasingly interested in the opportunities for Regal structural tubing as a product itself rather than as an intermediate product.

Copperweld Steel must decide whether to build a new DOM fabricating facility at the Regal Tube facilities, at the Ohio Steel Tube complex in Shelby, Ohio or elsewhere. In order to make this decision, Copperweld has retained Arthur D. Little, Inc. (ADL), to estimate the market for structural tubing as manufactured by Regal and to determine the advantages and disadvantages of locating the new DOM facility at Shelby, at Regal Tube, or at some third unspecified location. This report summarizes the results of our investigations in both areas.

B. MARKETS FOR STRUCTURAL TUBING

Regal Tube's sales of structural tubing should grow from 68,000 tons in 1971 to 114,000 tons in 1975, and to 167,000 tons in 1980. This increase represents a compound rate of growth of 14% per year through 1975 and 8% per year from 1976 to 1980. We expect the geographic distribution of the structural tubing market will remain essentially as it was in 1971. The greatest growth will be in products 4" to 8" in diameter, with a gradual rather than a sudden increase in average tubing size.

Farm equipment and industrial and commercial equipment markets will be the principal outlets for the Regal tubing line. These large, rapidly growing markets—which use larger sizes of tubing—should be pursued aggressively by Regal.

Transportation and recreational vehicles, building construction and other miscellaneous markets will experience GNP type growth rates of up to 5% per year. The transportation sector uses small tubing sizes for the most part, is extremely fragmented, and is cost sensitive. The building construction market, in our judgment, cannot grow rapidly unless significant market development monies are expended in design handbook publication, system development and extensive promotion to the thousands of practicing architects throughou the country. Other markets—such as that for materials handling equipment—are fragmented, tend to use small-diameter tubing, and are very cost sensitive. These miscellaneous markets are best served on an opportunistic basis.

The ROPS and guard rail markets are similar in that they represent potentially explosive growth opportunies, but we recommend that Regal approach them cautiously and not expect to achieve major penetrations in either market in the short term. The ROPS markets is technically complex, and is deeply involved in goverment regulations. Despite its projected rapid growth rate, this market may require from Regal more capital investment, administrative effort and marketing time than it is worth. We recommend that Regal investigate this market thoroughly and determine the costs and benefits of entry before pursuing it aggressively. Similarly, the guard rail market requires an extensive promotional program focused on buyers currently alien to Regal—federal and state highway authorities. If this market matures it will be so large that it probably will attract new welded tubing producers—perhaps even the basic steel companies themselves. The implications of such a development need to be considered carefully.

C. DOM FACILITIES LOCATION

Of the three candidate sites—Shelby, Chicago, and a green grass location—we recommend Chicago because this site offers the lowests costs, the greater flexibility, and the least

risk of physical catastrophe, environmental damage, or labor difficulty.

Consequently, we recommend that Copperweld install the new DOM facility at the Regal Tube location and immediately acquire land abutting this facility to be sure there is adequate space available not only for the DOM finishing facility but for an additional tube-welding facility as well.

II. THE MARKET FOR STRUCTURAL TUBE

II. THE MARKET FOR STRUCTURAL TUBE

A. THE MARKET OVERVIEW

Historically, the structural tube market has grown through the substitution of lighter-weight, less expensive, welded tubing for channels and angles in existing applications. The primary impetus behind this substitution has been the desire to reduce the total cost of producing a given member. In most sectors, improved appearance has been a secondary consideration.

Since the capital investment to produce smaller tubes, less than 4" square is low, this part of the market is very competitive and there are many small local firms. In fact, in different Regal sales regions, there are a quite different set of producers. Furthermore, the smaller companies tend to have lower overheads and different profitability objectives than Regal, and therefore are able to be very effective price strategists.

Regal is in a much more favorable competitive position in the market segment of larger tube sections (4" square and over), a larger capital investment is required, and the few competing companies tend to be similar to Regal in size and overhead burden.

In all segments of the market price is the key determinant of sales. However, price means not only the direct price comparison of one welded tube producer versus another but the comparative values in use. If the customer substitutes a tube for a pair of channels that must be welded together, he measures not only the difference in materials costs but also the savings in labor costs that can be expected by eliminating an in-house fabrication step, by requiring less time for installation, etc.

To most customers, welded tubing represents a relatively small proportion of their total metal purchases. Basically, welded tubing is a commodity-type product. Customers view the various welded tubing products as being undistinguish-

able from one producer to another, except where one firm may offer a special price, special service, or a special size.

This market is very diffuse. There are an extremely large number of actual and potential customers, and countless applications. Thus, there are too many non-standardized accounts to service efficiently through salaried salesmen. Consequently, a manufacturer needs a small core of inside/outside salesmen, and a larger group of representatives. Because these markets are so diffuse, a manufacturer must also depend on service centers for about 70% of his sales.

To service centers, welded tubing represents a low-value item. Service centers, therefore, are interested in turning their inventory over rapidly and price is a key way to do it. To large service centers, however, while welded tubing represents a relatively small portion of its sales, it does represent one of the few products which is contributing more than 2-3% per year to sales growth; thus, this does spark their interest in carrying and selling the product.

Consequently, pricing remains a key issue. The larger the order the more likely a producer is to price under "list." Such practices are more frequent in the smaller sizes because of the nature of the competition. The challenge to a given producer is how to anticipate the need to reduce price, how far, and how to be innovative in doing it (e.g., credit terms, quantity discounts).

The common sales approach in this industry is to call on as many customers as possible to introduce them to welded tubing. Little intensive customer education had been tried prior to the advent of Roll Over Protective Structures. Frequently, the customer initiates the request for information about welded tubing. Customer education seminars, aimed toward large potential users, can be a valuable sales tool.

The growth potential in this market is still high; a substantial amount of substitution is yet to be made. Nevertheless, price will continue to be an important factor. Welded

Tube of America, the principal Regal competition in the large size market, is likely to continue to be somewhat of a price cut leader because of excess capacity.

B. REGAL'S POSITION IN THE MARKET

Regal's products and its sales personnel are generally well regarded in this market. Regal has built a strong position in this rapidly growing market and is well situated for further growth.

Although Regal's position is due in part to the efforts of its own salesmen, an effective relationship with service centers and representatives has been an important element in its success. Some of the service centers, particularly the large, general-line houses, become a little nervous when Regal begins to talk about doing some of its own fabrication. They see this as being somewhat of an encroachment upon their own area of operations. To some extent this is true. But, fabrication also offers Regal a mechanism to improve customer service and to differentiate its product. Regal must be cognizant of the negative feeling on part of the service centers and salve any possible hard feelings before they arise. By a carefully-constructed strategy, with a bit of finesse, it should be possible for Regal to become a light fabricator and to maintain its good working relationships with the service centers in certain markets with selected customers.

Copperweld's acquisition of Regal is generally seen in the marketplace as a favorable factor. As long as Regal continues to service its welded tubing accounts effectively, the association with Copperweld will have a beneficial effect. There is concern by some customers that Copperweld may have purchased Regal simply to supply shells to its DOM facilities, and will ultimately drop some of Regal's present customers. This belief must be eliminated. On balance, Regal is in a good position to capitalise on its reputation and continue to participate in this growing market.

C. MARKET POTENTIAL FOR REGAL

Table 1 presents the prospects for Regal's sales of welded tubing in key market sectors through 1975 and through 1980. These estimates represent our estimates of the sales level Regal is likely to achieve based on the following assumptions:

- Regal will maintain its current market share, growing with the total market. Thus our sales projections represent total industry growth as well as Regal's own growth.
- Regal will maintain a constant sales cost per dollar of sales during this period by continually expanding its outside and inside sales and marketing programs.
- Neither Regal nor the industry collectively will undertake new aggressive market development programs.
- ROPS (roll over production structures) and guard rail markets will not consume large quantities of welded structural tubing.

As Table 1 indicates, Regal sales will be 114,000 tons per year by 1975—which works out to a growth rate of 14% per year. Although this growth rate is only about half of the growth rate that Regal has been experiencing since 1969, it is a healthy rate. Furthermore, it is a rate that is well within Regal's capability to attain. Below, we describe the principal market sectors.

TABLE 1

CURRENT AND PROJECTED REGAL STRUCTURAL TUBE SALES BY MARKET SECTOR (thousands of tons)

	1971	1975	1980	Percent 4" and Greater
Farm Equipment	32	60	85	50
Industrial & Construction Equipment	17	27	40	50
Transportation & Recreation Vehicles	7	12	24	35
Construction	4	5	6	60
Guard Rail	4	5	6	100
ROPS	0	0	—	65
Miscellaneous	4	5	6	20
Total	68	114	167	
Annualized Growth Rate		1971-75	1976-80	
		14%	8%	

1. **Farm Equipment**

This industry sector is the most well-defined, most concentrated, and most amenable to direct sale and shipment. Nonetheless, even here welded tubing is used for a variety of applications, and many orders are for 30,000-40,000 pounds and less. Thus even this sector cannot be serviced only by salaried Regal salesmen.

Table 2 summarizes the farm equipment market. Although this is the market sector which is penetrated to the largest extent by welded tubing, it is still, at best, 50% penetrated, and substantial substitution-based growth is still likely. For example, John Deere & Co., which probably purchases more welded tubing than any other single account (more than $8 million per year) is still welding a substantial amount of plates to channels. John Deere's Plow and Planter works has indicated a willingness to continue to work welded tubing into its plows as it redesigns the products. Furthermore, the recent availability of thicker-walled tubing (½" wall thickness) has opened up many new uses for welded tubing.

TABLE 2

FARM EQUIPMENT PROFILE

Sector Trends

- Total value of shipments 1969: $4.2 billion.
- Growth rate: 2-3% per year (constant dollars).
- Implements becoming more complex, wider and larger, although producers attempting to *not* increase total weight.

Tubing Applications

- Mainly as frames on field preparation and cultivation implements (large and small sections).
- Bracing on equipment and general implements.
- Approximately 50% is 4" and above.

Potential for Welded Tubing—Regal

- Regal sales 1971: 32,000 tons.
  Regal sales 1975: 60,000 tons.
  Regal sales 1980: 85,000 tons.
- Tube penetration 1971: 50%.
  Tube penetration 1976: 85-90%.
- John Deere, Massey Ferguson—progressive, good potential.
- J.I. Case—slow to react, largely unconverted, good potential.
- International Harvester—vested interest, poor to moderate potential.
- Smaller, limited line firms—good potential.
- Service centers should continue important, but manufacturer concept selling also important.
- Light fabrication—an asset to most customers.

This sector will grow slightly slower than GNP, 2-3% per year, through 1975. However, the progressive implement manufacturers are doing a substantial amount of product redesign. Therefore, we expect sales of structural welded

tubing in this market to increase 15% per year through 1975, and then moderate to 5% per year in 1975-80, as substitution slows.

Over the last few years larger and more powerful tractors have been built, to pull heavier implements at faster speeds. Recently, however, the tractor manufacturers have been displaying some interest in putting a ceiling on horsepower, reasoning that present equipment speeds are approaching their maximum. Thus, they have tended to avoid increasing the weights of the implements, or even to reduce them. At the same time there has been a trend toward more complex, larger, and wider implements that will plow, seed, or weed a larger area in a single pass. Both trends favor structural welded tubing since frequently a lighter-weight section of welded tubing can replace a channel, angle, or solid shape.

Until the last few years, most tubing had been 4" sections or smaller. A trend toward larger sections for frames on field and cultivation implements in line with their increased size and complexity has developed, however, and now approximately half of all tubing used is of 4" sections and above. The hitches, which attach the implement to the tractor, also tend to be made of the larger-size tubing. Most of the smaller tubing used in farm implements goes to form support bracing. The sector growth rate is achievable; Regal is quite well-connected—through the efforts of its regional representatives, service centers, and company salesmen—with farm belt companies, particularly John Deere. As long as Regal is able to remain on top of design changes at the large equipment manufacturers, it will be able to participate meaningfully in this growth.

Large manufacturers, of course, are where the large sales dollars are. Dealing with these companies, however, is almost like dealing with many separate firms. That is, engineering design and purchasing decisions are very much decentralized. Some basic materials and design specifications are written out of the corporate offices, but the individual manufacturing locations tend to have a significant amount of

freedom in choosing their own materials. Thus, while it is necessary to maintain a presence at the corporate offices, the real sales effort comes at the level of a given division or plant.

John Deere and Massey Ferguson represent two very progressive companies in this industry which offer good potential. Although J.I. Case uses less tubing than Deere or Ferguson, it is not innovative; it has been very slow to react to changes. More customer education is necessary to convince Case to use more tubing in its products. International Harvester does not represent as good a potential as even Case, since it has a vested interest in its own steelmaking facilities and is tied to a greater extent to channels, angles, and welded tubes manufactured in-house.

Many smaller, limited line firms participate in this industry. These companies frequently have less technological capability and, therefore, either follow the lead of the majors or require more basic education from the welded tubing supplier. On the other hand much less time generally must be invested to change these companies over to welded tubing than is the case for the larger manufacturer.

As Regal has already discovered, small, limited line manufacturers, e.g., Lahman Manufacturing in Hecla, South Dakota also represent a good potential. To convert these companies to greater tubing use is a matter of ferreting out where they are located and what products they produce and then educating the customer about application of welded tubing.

Light fabrication, e.g., sawing to lengths and punching holes would be viewed as an asset to most customers especially the large implement manufacturers. Many manufacturers would certainly prefer to reduce the headache of in-house fabrication and reduce the number of variables which its assembly people have to deal with.

However, Regal must be careful not to alienate its service centers, because even in this market service centers will

continue to be very necessary. In 1971 only about 23% of Regal's sales in region 10 (the farm belt) went directly to a customer. The remainder was either sold by a service center and shipped direct or sold by a service center out of its own inventory. Because of the nature of this market, it is unrealistic to assume that Regal could increase direct sales to much more than 30%. Thus, Regal must be cognizant of the importance of the service centers and must continue to cultivate a strong relationship with them.

2. Industrial and Construction Equipment

This market sector includes a large number of different products and an even larger number of applications. The market as a whole is growing at the rate of 10% per year, and should continue to grow at nearly this rate through the mid-1970's. Table 3 summarizes the key variables in this market sector.

Structural welded tubing has at least an initial position in this market and should continue to participate strongly in continued growth. Unlike many applications in the farm implement/equipment sector, however, most of the tubing applications here are for short lengths and a small amount of tubing used per piece of equipment. These characteristics mean smaller purchases per order on the part of the customer and more difficulty to the tubing manufacturer in anticipating customer needs or developing specialized products to suit the customer's needs.

Much of the equipment in this market is fairly heavy equipment that requires large tubular sections. Thus, we estimate that approximately half of this total market consumes 4" square and larger welded tubing. Typical applications for tubing include braces for light and heavy construction equipment, bases for industrial machines, equipment frames (not nearly to the extent as in farm equipment, however), housings for wires on equipment, conveyor and other automatic handling equipments of support pieces, and literally hundreds of other applications.

Regal sold 17,000 tons of tubing to companies in this market in 1971; we estimate a growth rate of 20% per year for Regal through 1975 (27,000 tons) and 10% per year (40,000 tons) for the period 1975-80. Even with this kind of a growth rate for Regal, which should parallel the total penetration of tubular products in this sector, welded tube will only have attained approximately a 20% penetration level by 1976, versus a 10% penetration level at present. This figure is indicative of the growth potential that remains in this market, although, admittedly, because of its fragmentation the potential is going to be difficult to reach.

TABLE 3

INDUSTRIAL AND CONSTRUCTION EQUIPMENT PROFILE

Sector Trends

- Total value of shipments 1969: $16.7 billion.
- Growth rate 1969-1975: 5% per year (constant dollars).

Tubing Applications

- Myriad applications, most of relatively short lengths, small amount per piece of equipment (vis-a-vis farm implements).
- Bracing, machine bases, wire housing, equipment frames, conveyor support pieces, etc.
- 50% is 4" and above.

Potential for Welded Tubing—Regal

- Regal sales 1971: 17,000 tons.
  Regal sales 1975: 27,000 tons.
  Regal sales 1980: 40,000 tons.
- Tube penetration 1971: 10%
  Tube penetration 1976: 20%
- Large accounts (Caterpillar, Allis-Chalmers) generally offer good potential.
- Market is impossible to service directly; too many small accounts; efforts of reps and service centers critical to participation in this market.
- Light fabrication less feasible here because of reliance on service centers, and fragmented nature of customer's needs.

Large accounts e.g., Caterpillar, Allis-Chalmers, generally offer good potential since they represent concentrated pockets of purchasing power. To a large extent, these accounts can be serviced directly by Regal's salaried salesmen. Here too, however, engineering design and purchasing are decentralized, and frequently the customers order in quantities of less

than 40,000 pounds. These characteristics indicate the need for reliance on service centers.

The bulk of this market is too fragmented to service with the present sales organization and too diffuse to serve with salaried salesmen, because of the extreme fragmentation. Additional sales representatives and continued reliance on service centers are critical if Regal is to continue to increase its share.

Because of the stronger reliance on service centers in this sector and diversity of the customer's needs, light fabrication is less feasible. Service centers are most important in this market, and Regal must exercise extreme caution not to disrupt the service center relationship.

3. Transportation and Recreation Equipment

This market is extremely diffuse, both in terms of the number of accounts and the kinds of applications. As Table 4 indicates, applications range from frames and hitches for various kinds of trailers, to protective structures for railroad cars to protect automobiles in shipment, to sundry bracing and supporting applications. Since many of these are for small sections, e.g., 2" square trailer hitches, we estimate that only 35% of this market uses larger section tubing. The trend, however, is toward larger sections as equipment—for example, trailers and their hitches—gets larger.

Although the market as a whole has grown at a rate of 7½% per year, we project only a 5% per year growth rate through 1975. Nonetheless, because of the limited tube penetration at present (10% in 1971), we believe that Regal's sales can grow at an annual rate of nearly 15% through 1980. The recreation sector of the market should grow faster than the general transportation sector as leisure time increases and recreational activities become more important.

Thus, we expect Regal sales to increase from 7,000 tons in 1971 to 12,000 tons in 1975 and 24,000 tons in 1980. Regal can achieve this growth by concentrating on the recreational

vehicle area and on new applications in general transportation markets, such as rail car protective devices.

As in the commercial and industrial sector, Regal faces a very fragmented market. Service centers are of key importance and will remain so. Again, Regal must maintain good relationships with these service centers. Although fabrication would be beneficial to many customers, the service centers are wary and will continue to be so. Regal must approach the service centers with care.

4. Roll Over Protective Structures.

Roll over protective structures (ROPS) represent an infant market sector which is on the verge of burgeoning. Because of federal and state safety legislation, ROPS will be utilized on virtually all new farm equipment and industrial and construction equipment. Table 5 represents a profile of this market. This market is truly enormous. For example, International Harvester estimates that it will purchase 30,000 tons per year of 4" and above tubing, whereas it now purchases only about 4,000 tons. This suggests that John Deere would also purchase about 30,000 tons, and that the market for ROPS in just the farm equipment sector of the total market could be 100,000-200,000 tons per year.

TABLE 4

TRANSPORTATION AND RECREATION PROFILE

Sector Trends

- Total value of shipments 1969: $83 billion.
- Growth 1969-1975: 5% per year (constant dollars).
- Increased leisure time and recreational activities, plus continued high personal mobility spurs growth.

Tubing Applications

- Myriad of applications, such as industrial and construction equipment; short lengths, small amount per unit.
- Trailer (boat, truck, camping) frames and hitches, railroad car protective structures, bracing and other supporting applications.
- 35% is 4" square and above.

Potential for Welded Tubing—Regal

- Regal sales 1971: 7,000 tons
  Regal sales 1975: 12,000 tons
  Regal sales 1980: 24,000 tons
- Tube penetration 1971: 10%
  Tube penetration 1975: 20%
- Recreational vehicles (campers, boat, trailers and hitches), plus new applications in standard markets (rail car protection) key areas of growth.
- Market: very fragmented; numerous medium-small accounts, unsophisticated technologically.
- Service centers of key importance.
- Light fabrication beneficial to customers, but service centers will be wary.

TABLE 5

ROLL OVER PROTECTIVE STRUCTURES (ROPS) PROFILE

Sector Trends

- Infant industry—as yet undefined.
- OEM—design and manufacturing; large firms; captive design, captive and subcontracted manufacturing; small-medium firms; more subcontracted.
- "Retrofit": independent, peripheral manufacturers, not much "captive."
- Seamless, hot worked (or normalized) welded tubing products of choice.

Tubing Applications

- Cold worked welded tubing not in mainstream; only few customers presently seriously considering cold-welded for significant use.
- 65% is 4" square and above.

Potential for Welded Tubing—Regal

- Potential for Regal's present product line—low; opportunity, as is, will be based on "fill in" orders, less critical items.
- Total potential for ROPS, very large, e.g., International Harvester—30,000 tons.

Large firms in this industry will design their ROPS in-house, but some will subcontract the manufacturing. To the extent they subcontract, the market will become more fragmented. Large firms may be able to be convinced to specify a generic kind of tubing, but it is unlikely that they will write specifications around a specific manufacturer's tubing. Small-medium sized firms, of course, will subcontract more design as well as manufacturing.

Manufacturers will produce little ROPS to retrofit their own equipment. Most of these structures will be designed and manufactured by independent, peripheral manufacturers. Thus, a whole new industry will spring up.

It is our assessment that welded tubing, as is, will be more than a marginal competitor and that the potential for roll over protective structures will remain unrealized for manufacturers of cold worked welded tubing. Seamless products, or hot worked (or normalized) welded tubing products will dominate this market. To the extent that welded-tubing manufacturers are willing to expend additional capital (e.g., in-line furnaces) they will participate in the market.

At present, such manufacturers as International Harvester and Caterpillar project that nearly two-thirds of their usage of steel for ROPS will be of 4" square or above. It is, of course, difficult to tell how actual designs will develop and to say that 65% of ROPS will be sections of this size is somewhat tenuous.

Again, however, we must emphasize that the potential for Regal's product line, cold worked welded tubing, is low. The few opportunities that will exist will be based on an occasional application for less critical equipment. That is, if minimum test performance is required for example, for a piece of equipment which will be used in a warmer climate—welded tubing might qualify. For most applications, however, it will not.

5. Guard Rail

The market for welded steel tube as guard rail is relatively unexploited and offers excellent growth potential. On the basis of FHA statistics and our own experience, we estimate that the total market for guard rail in 1971 was 30 million linear feet. (See Table 6.)

The use of guard rail per mile of highway has increased about 20% over the last seven years, primarily because of greater emphasis by federal and state highway departments

on motorist safety in highway design. Also, the expansion of the high-speed interstate highway system has required greater use of guard rail than have local streets and highways. The replacement market is also developing rapidly. The growth rate for guard rail is thus projected to be 6% per year, slightly greater than the expected 4% growth rate for highway construction, because we assume the trend toward increased usage of guard rail per mile of new highway construction will continue.

The majority of the guard rail used in the United States is either the steel "W" beam (deep beam) type or the cable type. Both of these have been well tested and widely accepted for many years and can be classified as large-volume commodity products. In recent years welded steel tubes (box beams), aluminum beams, and concrete barriers have come into usage—primarily in medians, bridge approaches, and as protection for signs or other fixed objects.

Federal regulations require guard rail protection under certain specified circumstances, but the type of product to be used is determined primarily by the state highway department. A contractor bidding on a guard rail contract bases his bid on the lowest-cost product that meets the specifications, which has the effect of eliminating the box beam, aluminum and concrete barriers because of the higher cost. These products are used only where specifically required. Almost all states depend primarily on "W" beams and cables but do specify (often on an experimental basis) the other types under special circumstances.

TABLE 6

GUARD RAIL PROFILE

Sector Trends

- Total market 1971: 30 million lineal feet. 1-2% welded tube.
- Total market growth: 6% per year.

Tubing Applications

- Tube used as lane separators where width of median is small and minimum deflection required.
- Significantly more expensive than double "W" beam but offers unique performance.
- Approximately 100% if for over 4".

Potential for Welded Tubing—Regal

- Regal sales 1971: 4,000 tons
  Regal sales 1975: 5,000 tons
  Regal sales 1980: 6,000 tons
- Selling to this underdeveloped market requires totally different approach than selling to industry. To grow significantly then, Regal must work with government specifiers for extended periods of time.

In calls to more than 20 state highway departments, the Federal Highway Administration, and several research groups, we found widely varied and often conflicting impressions about box beams. To those familiar with them, they were generally acknowledged to be a good product, desirable primarily in medians and bridge approaches. Box beams normally have been used where the median is too narrow to effectively use the double "W," but where the median is wide enough so the deflection caused by an impact will not intrude into the traffic in the opposite lane.

The box beam is more costly than the cable and W beam although the cost varies significantly in different areas of the country. Box beams are $11-14 per linear foot installed,

which is $3-6 per linear foot greater than the double W design in every location.

When compared to the concrete barrier, the box beam also offers the advantage of some deflection and thus less dangerous deceleration. It deflects less than the cable or single "W" and thus is appropriate where deflection must be controlled.

Concrete barriers are used where no deflection is permissible. They are also popular in heavily traveled urban areas where any maintenance after an accident would be extremely difficult to perform. However, the concrete barriers are the most costly system in many areas, and in northern climates they hinder snow removal.

Perhaps the most significant findings in our interviews were the misconceptions. Most of the interviewees in states without experience with box beams (and also frequently those in states where the box beam has been used) were not really aware of the characteristics of the box beam. Some responded that it was too rigid; others that it was too flexible; some that it was generally "unsafe," etc. In our estimation this lack of product awareness suggests an unexploited opportunity. New York's extensive experience with box beam and continued commitment to its usage suggests that the further exposure of the system in other states would be beneficial.

In New York it has been estimated that 20-25% of total guard rail requirements (in lineal feet) will use box beam. On a natioal basis, a similar percentage suggests a market of about 7 million feet, 90,000 tons per year, or $18 million.

6. Building Construction and "Other"

As shown on Table 7, Regal is shipping about 4,000 tons of structural tube per year to the construction industry, excluding guard rail applications. It believes that this market represents one of the greatest opportunities for structural tube in the future. In our projections of future sales, we have estimated a 5% per year growth for this sector.

TABLE 7

BUILDING CONSTRUCTION

Sector Trends

- Growth: GNP rate (4.5-5% per year).
- Highly fragmented; many end uses, many decision makers. Cost sensitive.

Tubing Applications

- In construction—columns, spandrels, handrails, etc. Trends toward larger sizes.

Potential for Welded Tubing—Regal

- Regal sales 1971: 8,000 tons
  Regal sales 1975: 10,000 tons
  Regal sales 1980: 12,000 tons
- Tube penetration: Less than 1%.
- Construction market: needs design handbooks—systems development, architectural promotion—to exceed this growth rate. Economics of such activity questionable.

The current construction market for heavy shapes is about 2.8 million tons with an additional 0.4 million tons of light shapes for a total of 3.2 million tons. The construction market for more expensive welded structural tube is probably between 20,000 and 50,000 tons—more like 20,000—or significantly less than 1% of the structural shape market. Because structural tube has such an insignificant market share, it is unlikely that a driving force can be created to change this penetration rate significantly. Product promotion is essential and the basic steel producers have the established organization to promote. We think it unlikely that the tube industry could compete with the structural manufa turers to provide the necessary product promotion.

There are approximately 100,000 architectural design firms in the country today and as many contractors. From our brief investigation, many of these firms specify tube for

very special applications—usually where aesthetics are a prime concern—but none specifies very much of the structural tubing compared with the structural market at large. In other words, the use per specifier tends to be uniform rather than concentrated. Therefore, it will be very time consuming and costly to inform the specifiers of the virtues of tube other than in its current markets.

The structural tube industry today—to the best of our knowledge—has no design information for the use of its products comparable to that furnished by AISC. With the details of sizes, weights, spans, and most importantly, connections specified in the AISC manual, the designer can readily extract not only the size member, but also the detail connections for virtually any application. Such detail is totally missing in the tube market.

Designers wish to minimize their design time and cost and since most rarely repeat a design, there is no incentive for them to understand a new shape such as structural tube for one job. Some have standardized details for tubes used as handrails, columns, braces, and the like, but the rate at which new standards are created by the architectural profession will be very slow, especially for a material that is slightly more expensive per pound and even more costly per structural unit strength than the existing shapes.

Some designers are looking for high-strength tubing, some for conventional strength, and we believe it unlikely that it would be worthwhile producing inventory and specifying a number of different strengths for tube application.

The one basic opportunity for welded tube would be for some manufacturer or fabricator to develop a system around the use of tube, much as Butler and Armco have done for standard metal buildings, or perhaps design a framing system for school buildings, or the like. Such a design would have to be complete with fabricating details, cost analyses, and the like. We doubt that the incentive exists today for anyone outside the tube industry to undertake such develop-

ment and we question whether the present structural tube industry stands to benefit from its own development of such systems.

We conclude, therefore, that short of a major investment by a tube producer or an industry group, structural tubing will continue to be used by the architects, but growth in this market will follow building activity. While Regal could promote more tube to this industry, we believe more fruitful areas exist for application development.

PLAINTIFF'S EXHIBIT 66

COPPERWELD STEEL COMPANY

February 19, 1973

Mr. D. O. Yoder, President
The Yoder Company
5528 Walworth Avenue
Cleveland, Ohio 44102

Dear Mr. Yoder:

It is possible that you may be asked to consider supplying part or all of the financing needed by David F. Grohne for his entry into the manufacture and sale of tubing products. Our information is that the name he will probably use for this enterprise is The Independence Tube Company.

In February of 1972 this corporation bought the Regal Tube Company, Chicago, Illinois, from Lear Siegler, and at that time Mr. David F. Grohne was the acting head of the Regal Tube Company.

Mr. Grohne led us to believe that he would either continue at Regal Tube as President and Chief Operating Officer under our ownership, or work for Lear Siegler, and we are greatly concerned if he contemplates entering the structural tubing market now in competition with Regal Tube.

Not only is there a non-compete on the part of Lear Siegler in our purchase agreement, but we specifically bought "all know-how, technical information, designs, plans, drawings, trade secrets, and inventions pertinent to the business of Regal."

In view of your potential interest in this enterprise, we want to put you on notice that under the above circumstances we intend to take any and all steps which are necessary to protect our rights under the terms of our purchase

agreement, and to protect the know-how, trade secrets, etc., which we purchased from Lear Siegler.

Mr. Grohne has been put on notice in a similar fashion of our intention to fully protect our know-how, trade secrets, etc.

Very truly yours,

/s/ PHILLIP H. SMITH

Phillip H. Smith

PHS/pm

cc: F. L. Seamans, Esq., General Counsel
Eckert, Seamans, Cherin & Mellott
1000 Porter Building
Pittsburgh, Pennsylvania 15219

PLAINTIFF'S EXHIBIT 87

THE YODER COMPANY

27 June 1973

Mr. David F. Grohne, President
Independence Tube Corporation
907 Lawn Court
Western Springs, Illinois 60558

Mr. Grohne:

This is a statement of the Yoder Company Guarantee to Independence Tube Corporation.

The Yoder Company warrants that the proposed equipment will be suitable for producing the structural tubing as specified.

We will furnish Independence Tube Corporation with the best structural tube mill available and provide every possible technical assistance including the services of Ben Dolphin for the duration of this project, to help Independence Tube Corporation achieve the desired results. Design criteria for the mill shall be based on agreements reached between Ben Dolphin and Ted Eckhardt of the Yoder Company and yourself.

The equipment will be essentially as described in specifications B-0739 with provisions to allow for any additional or auxiliary equipment that may be required to meet the desired results.

The total price for this equipment is $1,345,000.

TERMS AND CONDITIONS

The equipment is f.o.b. our factory, Cleveland, Ohio.

The attached "Standard Conditions of Sale", dated 3 October 1966, apply to this equipment with the exception of

payment. Terms of payment will be net 30 days from shipment.

All funds equal to the total purchase price shall be placed in escrow or equivalent. Interpretation of equivalent to be left up to the Yoder Company.

DELIVERY

Based on our present operations, delivery of this equipment can be made in approximately 13 months after receipt of full manufacturing information in our plant.

SERVICE

Start-up service by the Yoder Company is included.

We will furnish bolt hole location drawings and electrical stubups as required for Independence Tube Corporation to have the equipment installed.

We will then provide the necessary service and technical assistance to start up the equipment and demonstrate its capabilities with regard to your product requirements.

You may be sure we want to do anything we can to help you.

Sincerely,

THE YODER COMPANY

/s/ JAMES G. NILES

J. G. Niles
Product Manager
Tube Mills

JGN:ah
Encls.

cc: Ted Eckhardt
Yoder Chicago

STANDARD CONDITIONS OF SALE (YODER)

1. ACCEPTANCE: The attached proposal is void unless accepted within thirty days from date hereof and is subject to change without notice. It supersedes all previous quotations and agreements. If accepted by the Purchaser it shall constitute an order but shall not become binding on the part of The Yoder Company, hereinafter called "Company", until it is acknowledged from the Home Office in Cleveland, Ohio.

2. TERMS: Unless special written terms are arranged all quoted prices are f.o.b. cars or trucks at the point of our assembly and are subject to progress payments as follows:

The delivery time specified in the acknowledgement will be divided into five equal periods.

20%— at end of 1st period

20%— at end of 2nd period

20%— at end of 3rd period

20%— at end of 4th period

Balance—Net, thirty days after date of shipment.

No cash discount will be allowed.

If shipments are delayed by the Purchaser, payment shall become due from date when the Company is prepared to make shipment.

Shipment is contingent upon Purchaser's financial condition being at all times satisfactory to the Company.

3. CANCELLATION: Orders once accepted are not subject to cancellation unless on terms which will indemnify the Company against loss.

4. SHIPMENT: Delivery to the Purchaser is at the assembly plants of the Company in Ohio and all claims for shortages or breakage in transit shall be made directly to the carrier. Shipping dates are approximate and date from

receipt of signed contracts and complete manufacturing information at the Home Office of the Company. Company shall not be liable for delays due to strikes or causes beyond its direct control. Receipt of the equipment by the Purchaser upon its delivery shall constitute a waiver of all claims for loss or damage due to delay.

5. TAXES: Quoted prices do not include taxes: Purchaser agrees to pay such taxes as may be imposed upon this transaction.

6. DRAWINGS: All drawings submitted with this proposal are approximate. Detailed or shop working drawings will not be furnished for any part of the equipment offered.

7. SPECIFICATIONS: (A) In the event the specifications and designs for the equipment, or any part thereof, furnished under this order are by Purchaser: (1) Purchaser will save Company harmless from all claims, costs and expenses of any patent infringement claims or proceedings; and (2) Company shall not be responsible for the accuracy or suitability of such design or specifications nor for the performance of any apparatus built in conformity thereto. (B) In the event Purchaser desires changes in specifications furnished by Company, such changes shall be subject to Company's acceptance and any increased cost resulting therefrom shall be paid by Purchaser upon invoice.

8. INSTALLATION AND SERVICE: All apparatus shall be installed by and at the expense of Purchaser, unless otherwise expressly stipulated.

Should purchaser request the use of servicemen not specifically provided for and included in the contract price, additional charges will be payable to Company at our prevailing per diem rates for such services, plus travel and living expenses.

9. TESTING: All material or equipment necessary for special testing at the Company's works shall be furnished by Purchaser without cost to the Company.

10. PATENTS: Except as herein set forth, in case any suit or proceeding alleging patent infringement is threatened or instituted against the Purchaser and is based upon a claim that any apparatus, or any part thereof, furnished under this contract constitutes an infringement of any United States patent issued prior to the date of the Company's proposal, Purchaser agrees that no claim shall be made against Company unless purchaser has notified Company promptly, in writing, of the threat or institution of said suit or proceeding and unless Purchaser gives Company full authority, information, assistance and cooperation in the investigation of all facts and in the preparation and maintenance of any defense. In any such event it is further agreed that Company shall have the following options: (1) Company may defend said suit or proceeding in behalf of Purchaser and pay all damages and costs awarded herein against the Purchaser; or (2) Company may replace said apparatus or part with non-infringing apparatus or part; or (3) Company may procure for the Purchaser the right to continue using said apparatus or part; or (4) Company may remove said apparatus or part and refund to Purchaser the purchase price less 20% thereof for each year or fraction of a year since the date the same was purchased by Purchaser. The foregoing states Company's entire liability for patent infringement of any apparatus or part furnished hereunder, which liability shall cease and terminate five years following the date of purchase.

11. WARRANTY: Except as herein set forth, the Company warrants that the apparatus to be delivered hereunder shall be suitable for performing the work described in the specifications, and shall be free of defects in materials or workmanship under normal use and service. Speed of production or output are matters beyond the control of the Company and no warranty is implied with respect to any such matter, and if set forth in the specifications, shall be treated as an estimate and not as a binding warranty. It shall be the obligation of Purchaser to fully test the apparatus upon its receipt, provided, however, that the Com-

pany shall be notified of and may be represented at all tests that may be made. Our liability hereunder is limited to the repair or replacement of apparatus proving defective within 180 days after date of shipment to Purchaser. Auxiliary items manufactured by others are sold only under such warranty as the maker provides. No other warranty, except of title, shall be implied. We assume no liability for repairs made by others without our consent.

PLAINTIFF'S EXHIBIT 88

THE YODER COMPANY

Subject

INDEPENDENCE TUBE 20 July 73

Jerry—

Here's a memo of my conversation with Grohne today.

PLEASE REPLY TO Signed TED

DATE Signed

RECIPIENT—REPLY AND RETAIN PINK COPY.
DETACH AND RETURN THIS COPY TO SENDER.

INTER-OFFICE CORRESPONDENCE (YODER)

To: Jerry Temple
From: Ted Eckhardt

Date: 27 July 1973
Subject: Independence Tube Corp. Quotation B-0739

Jerry:

Unless something unusual occurs it appears like Grohne is not going to be able to "swing" our proposal.

I talked with him today and was told—

a) He can't provide the bank with the assurance they want so they'll get their money back if they pay us net 30 and the mill doesn't perform as expected.

b) $1,345,000 is too much to swing. (He does have better price offers.)

c) If the ground rules must remain as they are to consider the proposition dead.

TKE:mm

PLAINTIFF'S EXHIBIT 90

COPPERWELD CORPORATION

October 15, 1973

Mr. D. O. Yoder, President
The Yoder Company
5528 Walworth Avenue
Cleveland, Ohio 44102

Dear Mr. Yoder:

I wrote to you on February 19, 1973, concerning the supply of tube welding machinery to Mr. David F. Grohne. We understand that Mr. Grohne is proceeding with his venture, and also note that we received no definitive reply from you to my letter of February 19. I would appreciate receiving a letter from you, either acknowledging that you are supplying tube welding machinery to Mr. Grohne, or affirming that you will not be supplying to him.

Very truly yours,

/s/ PHILLIP H. SMITH

Phillip H. Smith

PHS/pm

Enclosure

cc: Mr. Frank L. Seamans
Eckert, Seamans, Cherin & Mellott

PLAINTIFF'S EXHIBIT 199

AGREEMENT OF SALE
OF REGAL TUBE DIVISION
BETWEEN

LEAR SIEGLER, INC.

and

COPPERWELD STEEL COMPANY

Dated: January 6, 1972

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AGREEMENT OF SALE

THIS AGREEMENT made between COPPERWELD STEEL COMPANY (hereinafter referred to as "Copperweld"), a Pennsylvania corporation, with offices in the Frick Building, Pittsburgh, Pennsylvania 15219, and LEAR SIEGLER, INC. (hereinafter referred to as "LSI"), a Delaware corporation, with offices at 3171 South Bundy Drive, Santa Monica, California 90406.

WITNESSETH:

WHEREAS, Copperweld desires to purchase and LSI desires to sell and transfer to Copperweld the assets and business of LSI's Regal Tube Division (hereinafter referred to as "Regal") on the terms and conditions hereinafter provided;

NOW, THEREFORE, the parties hereto, intending to be legally bound, covenant and agree as follows:

ARTICLE I. ASSETS

Section 1.1: LSI agrees to sell and transfer to Copperweld and Copperweld agrees to purchase all of the assets and business of Regal as the same shall exist on the Closing Date, February 29, 1972, as defined in Article V hereof. Without in any way limiting the generality of the foregoing, the assets and business of Regal to be sold, transferred and purchased hereunder shall include the following:

(a) The name, trade names (if any) and goodwill of Regal.

(b) The leasehold described in that certain lease from Leargo Corp. to LSI, dated June 1, 1969, demising land situate in Bedford Park, Cook County, Illinois, together with LSI's leasehold interest in the buildings, machinery, equipment and other property generally described in Schedule A thereto.

(c) All machinery, equipment, and other physical property of every kind and description owned by LSI and constituting a part of Regal, whether located on the above-mentioned premises or elsewhere.

(d) All inventories of raw materials, work in process, finished goods, and supplies relating to or held for use in the business of Regal, whether located on the leased premises or elsewhere.

(e) All notes and accounts receivable of Regal, arising out of the business or activities of Regal.

(f) All prepaid expenses, to the extent the benefit thereof is transferable.

(g) All rights under contracts pertaining to the business of Regal, including but not limited to contracts of purchase or sale of goods or services, transferable insurance policies, licenses, and leases of real or personal property.

(h) All U.S. and foreign patents, copyrights, and trademarks (if any) held or used by Regal, to the extent of such use.

(i) All know-how, technical information designs, plans, drawings, trade secrets, and inventions pertinent to the business of Regal.

(j) All records of Regal, including property records, plant records, production records, engineering records, contract records, personnel records of employees of Regal, and accounting records.

(k) Regal's sales data and records, customer lists, catalogs and brochures.

(l) Cash, including cash on hand and on deposit in bank accounts regularly maintained for Regal.

ARTICLE II. PURCHASE PRICE

Section 2.1: The purchase price shall be computed as follows:

(a) The book value of Regal's assets, less accumulated depreciation and reserves;

(b) Plus $3,000,000, which Copperweld agrees is for goodwill;

(c) Less the book value of Regal's liabilities other than taxes on income and deferred federal income taxes.

Section 2.2: Book values shall be determined by reference to financial statements of Regal ("Closing Financial Statements") prepared as of the Closing Date by Regal in accordance with generally accepted accounting principles applied on a basis consistent with Regal's past practices and audited by Alexander Grant & Co. LSI will permit Haskins & Sells to read the audited financial statements of Regal as of February 29, 1972 and the related report and working papers of Alexander Grant & Co. and to make inquiries of the representatives of Regal and Alexander Grant & Co. with respect thereto and to apply such other auditing procedures as in the opinion of Haskins & Sells are necessary under the circumstances. Subject to the provisions of Section 2.3, the audit report prepared by Alexander Grant & Co. and the Closing Financial Statements covered thereby shall be binding and conclusive on both parties.

Section 2.3: If Haskins & Sells, as a result of their reading of Regal's audited financial statements and the related report and working papers of Alexander Grant & Co. and their inquiries with respect thereto, disagree in any material regard with the determinations made by Alexander Grant & Co., then in the event such disagreement is not resolved by Copperweld and LSI, each item of disagreement and the amount thereof shall promptly be submitted to a third firm of certified public accountants selected by Alexander Grant & Co. and Haskins & Sells to decide such disagreement, and the

decision of such third firm shall be binding upon both parties.

Section 2.4: The auditors shall take care to write down or write off, as appropriate, idle plant and equipment (if any) and obsolete or otherwise unsaleable inventories, all in accordance with generally accepted accounting principles.

Section 2.5: The cost of the audit, including Haskins & Sells participation and the participation, if necessary, of a third firm, shall be shared equally by the parties.

Section 2.6: With respect to the Regal Tube Division, Lear Siegler, Inc. Retirement Trust under which Continental Illinois National Bank & Trust Company is Trustee (the "Plan"), it is understood that LSI is accruing and will continue to accrue, through the Closing Date, amounts payable to the Trustee under the Plan at the rate of 4.84% of payroll in accordance with Regal's practices during the year ended June 30, 1971. The amount so accrued as of February 29, 1972 shall be included as a liability of Regal in the Closing Financial Statements and shall be assumed by Copperweld and paid to the Trustee by Copperweld not later than March 31, 1972. Effective on the Closing Date, such subsidiary or division of Copperweld as shall be the transferee of the Regal assets shall become the "Company" for purposes of the Plan and Copperweld shall hold LSI harmless from any further liability or obligation under the Plan; but Copperweld as successor to LSI shall have all powers and privileges of the "Company" as provided in the Plan. The parties agree to execute, together with the Trustee, such instruments as may be necessary or appropriate for the purpose of carrying into effect the provisions of this Section.

Section 2.7: Regal is following the practice of accruing management bonuses for six individuals who report directly to the president of Regal at the annual rate of 4% of the amount by which earnings before taxes exceed 10% of average invested capital. Such bonus accruals for the eight months ending on the Closing Date shall be included as a

liability of Regal in the Closing Financial Statements and shall be assumed by Copperweld.

ARTICLE III. LIABILITIES

Section 3.1: As of the Closing Date, Copperweld agrees to assume only the following liabilities and obligations of Regal:

(a) The obligations of Regal under the contracts and leases to be transferred to Copperweld under Article I hereof, including Regal's obligation to complete performance of outstanding orders.

(b) Any back charge obligations of Regal for the return of goods shipped prior to the Closing Date. If the amount of such back charges during the year following the closing, expressed as a percentage of gross sales during such year, exceeds by more than one-tenth the amount of such back charges during the year preceding the closing, expressed as a percentage of gross sales during such year, then LSI shall reimburse Copperweld (as an adjustment of the purchase price) for the loss, if any, sustained by Copperweld as a consequence of such excess back charges, after giving effect to the fair value of the goods returned. The amount of such loss, if any, shall be determined in accordance with generally accepted accounting principles by the independent auditors regularly employed by Copperweld.

(c) All liabilities reflected on Regal's Closing Financial Statements except liabilities, including deferred liabilities, for income taxes.

Section 3.2: Copperweld shall not assume any liabilities for breach of warranty in connection with merchandise shipped by Regal prior to the Closing Date, except as provided in Section 3.1(b).

ARTICLE IV. PAYMENT

Section 4.1: LSI hereby acknowledges receipt of $1,000,000 paid by Copperweld at the time of execution of this Agreement. In the event that the sale, transfer and purchase contemplated herein is not consummated, for any reason, the entire $1,000,000 shall be refunded by LSI to Copperweld, without prejudice to the rights of either party to pursue a claim for breach of this Agreement.

Section 4.2: On the Closing Date Copperweld shall pay to LSI in cash, on account of the purchase price, an amount equal to (a) the book value of Regal's assets, less accumulated depreciation and reserves, less (b) the book value of Regal's liabilities other than taxes on income and deferred Federal income taxes, all determined as of January 31, 1972 on the basis of Regal's unaudited financial statements as of that date, less (c) $1,000,000. On the Closing Date Copperweld shall deliver to LSI, as evidence of its obligation to pay the balance of the purchase price, its 15-day promissory note for $3,000,000, non-interest bearing, in fully negotiable form.

Section 4.3: As soon as practicable following completion of the audit provided for in Article II hereof and final determination of the purchase price in accordance with said Article II, Copperweld shall pay to LSI in cash any unpaid portion of the purchase price, or (as the case may be) LSI shall repay to Copperweld in cash and overpayment of the purchase price.

ARTICLE V. CLOSING

Section 5.1: The closing hereunder shall be held at the offices of Regal at 10:00 A.M., Chicago time on February 29, 1972.

Section 5.2: At the closing, all steps shall be taken and documents and instruments delivered which are necessary or desirable to consummate this transaction and transfer the

assets and business of Regal to Copperweld as herein provided.

Section 5.3: Without limiting the generality of the foregoing, LSI shall deliver the following:

(a) A certified copy of a resolution of the Board of Directors of LSI authorizing this Agreement, the transaction contemplated by this Agreement, and the obligations assumed hereunder by LSI.

(b) A certificate of LSI that there has been no material adverse change in the business or assets of Regal from the date of this Agreement to the Closing Date.

(c) A certificate of LSI that the warranties and representations of LSI set forth in this Agreement are true and correct as of the Closing Date.

(d) Executed bills of sale covering all of the property to be transferred hereunder, in suitable form for use in Illinois or such other jurisdiction in which the property covered by the respective bill of sale may be located, transferring all right, title and interest in such property to Copperweld with full guarantees of title in the form employed in the applicable jurisdiction.

(e) Executed assignments of all leases, agreements, indebtedness, patents, trademarks, trade names, transferable policies of insurance, accounts receivable or other rights and interests to be transferred hereunder in suitable form to transfer all right, title and interest to Copperweld.

(f) A written opinion from LSI's regular counsel that LSI is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and that LSI has full power and authority to sell and transfer the assets and business of Regal; that this Agreement has been authorized by appropriate corporate action of LSI; that this Agreement is a valid and existing obligation of LSI in accordance with its

terms; that this Agreement and the consummation of the transaction contemplated hereby does not conflict with the charter or by-laws of LSI; that such counsel has no knowledge that the consummation of the transaction contemplated hereby conflicts with any contract to which LSI is a party, or is contrary to any order of any court to which LSI is subject; and that such counsel has no knowledge of any facts, proceedings, orders, contracts or other matters inconsistent with any of the warranties and representations made by LSI in this Agreement.

Section 5.4: Without limiting the generality of Section 5.2 hereof, Copperweld shall deliver the following at the closing, in addition to the certified copy of the Resolution of its Board of Directors, which has already been delivered:

(a) A certificate that the warranties and representations of Copperweld set forth in this Agreement are true and correct as of the Closing Date.

(b) A written opinion from Copperweld's regular counsel that Copperweld is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania; that this Agreement has been authorized by appropriate corporate action of Copperweld; that this Agreement is a valid and existing obligation of Copperweld in accordance with its terms; that this Agreement and the consummation of the transaction contemplated hereby does not conflict with the charter or by laws of Copperweld; that the consummation of the transaction contemplated by this Agreement is not contrary to any contract of which such counsel has knowledge to which Copperweld is a party, is not contrary to any order of which such counsel has knowledge of any court to which Copperweld is subject and that such counsel has no knowledge of any facts, proceedings, orders, contracts or other matters inconsistent with any of the warranties and representations made by Copperweld in this Agreement.

Section 5.5: Subsequent to the closing hereunder, LSI shall be obligated to take all reasonable steps and execute and deliver to Copperweld appropriate documents and instruments which Copperweld may reasonably desire to effectuate or evidence the transfer of the business and assets of Regal to Copperweld.

Section 5.6: This Agreement shall survive the closing hereunder.

ARTICLE VI. WARRANTIES BY LSI

Section 6.1: LSI makes the warranties, representations and covenants listed below. Such warranties and representations shall be true and correct on the date of this Agreement (if applicable) and on the Closing Date. Such warranties and representations shall continue in effect after and survive the closing hereunder but after the Closing Date shall speak as of the Closing Date.

Section 6.2: LSI is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power and authority (corporate and other) to own or lease the property and assets of Regal and conduct the business and activities of Regal as and where such properties are now owned or leased or such business is now conducted.

Section 6.3: From the date of this Agreement to the Closing Date, there has been no change in the financial condition of Regal except for normal changes occurring in the ordinary course of business which have no material adverse effect upon the assets or business of Regal.

Section 6.4: LSI has clear title, free and clear of liens and encumbrances to the assets to be transferred pursuant to Article I hereof, except for the assets leased by it from Leargo Corp. With respect to the latter, LSI warrants that it conveyed clear title, free and clear of all liens and encumbrances to Leargo Corp. and that it has clear title to its leasehold estate fee and clear of liens and encumbrances.

Section 6.5: The notes and accounts receivable of Regal on the Closing Date are valid and subsisting obligations owing to LSI and such receivables, net of reserves expressly shown on the Closing Financial Statements, shall be collectible in full within one year after the Closing Date. Copperweld agrees to make a reasonable effort to collect such receivables. However, if the actual bad debt experience after closing exceeds the reserve provided therefor in the closing balance sheet, LSI agrees to reimburse Copperweld for the difference, in accordance with the terms of Section 11.1 hereof.

Section 6.6: The execution and delivery of this Agreement by LSI and the consummation of the transaction contemplated hereby do not conflict with or violate any contract or agreement to which LSI is a party except as herein provided where various consents may be required, are not contrary to the Articles of Incorporation or By-Laws of LSI and are not contrary to any order of any court to which LSI is subject.

Section 6.7: LSI has no knowledge that LSI or Regal has failed to comply with any law, regulation or order applicable to the businesses, properties and operations of Regal.

Section 6.8: There are no actions, suits or proceedings pending, and LSI has no knowledge of any actions, suits or proceedings threatened, against LSI affecting Regal or any of the properties, assets, businesses or operations of Regal. As of the date of this Agreement, LSI is not, and LSI has no knowledge of Regal being charged with violating or threatened with a charge of violating or under investigation with respect to a possible violation of any provisions of federal, state or local law or administrative rulings or regulations relating to any material aspect of the assets, properties, businesses or operations of Regal or relating to the transaction contemplated by this Agreement.

Section 6.9: LSI has duly filed all federal, state and other tax returns required to be filed by applicable laws and regulations for all periods up to and including the Closing Date and has duly paid all taxes or installments thereof shown by such returns to be due on or before the Closing Date. There are not any deficiencies or delinquencies in any federal, state, foreign and other tax (including interest or penalties) with respect to any taxable period or attributable to any transaction or transactions prior to the Closing Date involving the assets, properties, businesses or operation of Regal.

Section 6.10: The assets and properties and rights to be transferred to Copperweld pursuant to this Agreement are sufficient and adequate to continue to properly and normally conduct after the Closing Date the business and operations conducted by Regal in the same manner as such business and operation of Regal is being conducted on the date of this Agreement and consist of all of the assets and business of Regal.

Section 6.11: LSI has no knowledge of any strikes or labor disputes threatened or pending against Regal of a material nature.

Section 6.12: Any policies of insurance to be transferred to Copperweld hereunder are in full force and effect. All premiums with respect to such policies which became due and owing prior to the Closing Date have been paid in full.

Section 6.13: LSI has full power and authority to sell the assets, business and rights of Regal pursuant to this Agreement. To the extent that any consents, approvals or agreements from any third parties are required to effectuate or accomplish the transfer of any material asset or property to be transferred hereunder, and such consents, approvals or agreements have not been obtained before the Closing Date, LSI will make reasonable efforts to obtain them after the Closing Date, in cooperation with Copperweld. This Agreement, the transaction contemplated by this Agreement and

the obligations assumed by LSI have been duly authorized by appropriate corporate action on the part of the directors of LSI, and upon the execution and delivery of this Agreement, it shall be a valid and binding obligation of LSI in accordance with its terms.

Section 6.14: LSI has not incurred any liability for which Copperweld would be responsible for brokerage fees, finder's fees, agent's commissions or other similar forms of compensation in connection with this Agreement or the transaction contemplated hereby.

Section 6.15: The unaudited financial statements of Regal as of November 30, 1971, copies of which are annexed, are substantially correct and fairly reflect the financial condition and operating results of Regal as indicated thereon, subject to audit adjustments.

ARTICLE VII. COPPERWELD WARRANTIES

Section 7.1: Copperweld makes the following warranties, representations and covenants set forth in Section 7.2 through Section 7.4. Such warranties and representations shall be true and correct on the date of this Agreement and on the Closing Date. Such warranties and representations shall continue in effect after and survive the closing hereunder but after the Closing Date shall speak as of the Closing Date.

Section 7.2: Copperweld is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania. Copperweld has full power and authority to enter into this Agreement and consummate the transaction contemplated by this Agreement. This Agreement, the transaction contemplated by this Agreement, and the obligations assumed by Copperweld hereunder have been duly authorized by appropriate corporate actions on the part of Copperweld's directors and upon the execution and delivery of this Agreement, it shall be a valid and

binding obligation of Copperweld in accordance with its terms.

Section 7.3: The execution and delivery of this Agreement and the consummation of the transaction contemplated hereby do not conflict with or violate any contract or agreement to which Copperweld is a party, are not contrary to the Articles of Incorporation or By-Laws of Copperweld and are not contrary to any order by any court to which Copperweld is subject.

Section 7.4: Copperweld has not incurred any liability for which LSI would be responsible for brokerage fees, finder's fees, agent's commissions or other similar forms of compensation in connection with this Agreement or any transaction contemplated hereby.

ARTICLE VIII. TAXES

Section 8.1: LSI shall be responsible for all foreign, federal, state and local net income taxes applicable to the properties, business and/or operation of Regal for any period prior to the Closing Date, and any such net income taxes as a result of the transaction contemplated by this Agreement.

Section 8.2: LSI shall indemnify and hold Copperweld harmless from any claim or liability for any tax which LSI is obligated to pay pursuant to Section 8.1 and shall pay all expenses incurred by Copperweld in defending against any such claim for taxes, including reasonable attorneys' fees.

Section 8.3: Any sales, transfer, use or similar taxes (including gross income taxes in the nature of sales taxes) levied upon this Agreement or the transaction and transfers contemplated by this Agreement shall be shared equally by the parties.

Section 8.4: Liability for property taxes and similar assessments shall be prorated as of the Closing Date.

ARTICLE IX. OBLIGATIONS OF LSI UNTIL CLOSING

Section 9.1 Except for steps or actions taken pursuant to prior written consent of Copperweld, LSI, from the date of this Agreement until the Closing Date, shall conduct the business and operations of Regal in accordance with the same business practices previously followed by it and during that period shall:

(a) Conduct its business only in the ordinary and usual course and shall not make any capital expenditure or commitment for capital expenditure.

(b) Refrain from transferring any of its assets or properties except in the ordinary and usual course of business.

(c) Refrain from entering into any leases, licenses, contracts or other commitments involving actual or potential liability in excess of $30,000, and shall refrain from entering into any leases, licenses, contracts or other commitments involving actual or potential liability of less than $30,000 other than in the ordinary and usual course of business.

(d) Refrain from increasing the compensation paid or payable to any of the employees, agents or consultants of Regal, except in accordance with its present written commitments and in accordance with usual and customary periodic reviews and adjustments.

(e) Refrain from paying or declaring any bonuses to any of the employees, agents or consultants of Regal except in accordance with past practice.

(f) Continue to meet its contractual obligations relating to Regal and to pay its obligations as they mature in the ordinary course of business.

(g) Use its best efforts to maintain the business of Regal intact, to keep available the services of its present employees, and to preserve the good relations of its

suppliers, customers and others with whom it has business relations.

(h) Maintain existing fire and other casualty insurance policies on the assets of Regal.

Section 9.2: Subsequent to the execution of this Agreement and prior to the Closing Date, LSI shall furnish to Copperweld all information available to LSI concerning the affairs of Regal and copies of documents as Copperweld may reasonably request relating to Regal and its properties, plants, books, records and files, and shall permit Copperweld and any persons designated by Copperweld full and free access to the properties, records and books of account of Regal for any and all reasonable purposes.

ARTICLE X. CONDITIONS OF CLOSING

Section 10.1: The obligations of Copperweld under this Agreement are subject to the satisfaction of all of the following conditions by the Closing Date, any of which may be waived by Copperweld:

(a) All representations and warranties of LSI contained in this Agreement shall be true and correct as of the Closing Date.

(b) LSI shall have fully performed all commitments hereunder up to the Closing Date and shall tender and deliver the required documents, instruments, certificates and opinions at the closing as set forth in Section 5.3.

(c) There shall not be any material adverse change in the business and affairs of Regal from the date of this Agreement to the Closing Date, and, during that period, Regal shall not have suffered any material loss by fire or other casualty.

(d) LSI shall have obtained the consent of Leargo Corp. and the mortgagee to the assignment of its lease (referred to in Section 1.1) to Copperweld; and the leasehold estate created by said lease shall not be subject

to any defects or encumbrances, other than the mortgage and assignment in favor of New York Life Insurance Company, which might reasonably be expected to materially interfere with the uninterrupted enjoyment thereof by Copperweld.

(e) All other consents required from any corporation, person, party or other entity in order to effectuate the transfers called for under this Agreement in accordance with this Agreement shall have been obtained or otherwise provided for as herein or otherwise agreed to.

Section 10.2: If any of the conditions set forth in Section 10.1 have not been satisfied by the Closing Date, Copperweld at its option exercised in writing, may:

(a) rescind this Agreement with each party to the Agreement bearing its own expense; or

(b) agree to the closing pursuant to this Agreement notwithstanding such failure, in which case LSI shall, at its own expense, exercise its best efforts to remedy the failure as soon as possible after closing; or

(c) agree to the closing pursuant to this Agreement on such further terms and conditions as the parties hereto may agree to in writing.

Section 10.3: The obligations of LSI hereunder are subject to the satisfaction of the following conditions prior to the closing, any of which may be waived by LSI:

(a) All representations and warranties made in this Agreement by Copperweld shall be true and correct as of the Closing Date, and all covenants to be performed by Copperweld shall have been so performed.

(b) Copperweld shall tender and deliver the required certificate and opinion at the closing as set forth in Section 5.4.

(c) The condition set forth in Section 10.1(d) shall have been satisfied. LSI agrees to use its best efforts to

obtain the consent of Leargo Corp. and the mortgagee. If such consent requires that LSI shall remain obligated or responsible for the performance of the lessee's obligation under the Leargo lease and related instruments, then Copperweld agrees to execute and deliver to LSI an instrument (i) assuming and agreeing to perform such obligations and indemnifying LSI against any failure of performance thereof, and (ii) granting to LSI, in the event of a default by Copperweld, substantially the same remedies as the lessor under said lease would have in the event of a default by the lessee thereunder.

ARTICLE XI. INDEMNITY

Section 11.1: LSI shall indemnify Copperweld and hold Copperweld harmless from and in respect of any and all loss, liability, cost or expense (including reasonable fees and expenses of counsel) accruing from or resulting by reason of any breach of any warranty, representation, commitment or promise contained in this Agreement made or to be performed by LSI. Any knowledge or notice which Copperweld may have on or prior to the Closing Date of any breach of any such warranty, representation, commitment or promise shall not limit or reduce to any extent whatsoever the obligations of LSI under the first sentence of this Section 11.1. Any payments made by or on behalf of LSI pursuant to its agreement to indemnify under this Section 11.1 shall be made as a reduction of the purchase price for the assets, property and business transferred to Copperweld pursuant to this Agreement.

Section 11.2: Copperweld shall indemnify LSI and hold it harmless from and in respect of any and all loss, liability, cost or expense (including reasonable fees and expenses of counsel) accruing from or resulting by reason of any breach of any warranty, representation, commitment or promise contained in this Agreement made or to be performed by Copperweld. Any knowledge or notice which LSI may have on or prior to the Closing Date of any breach of any such

warranty, representation, commitment or promise shall not limit or reduce to any extent whatsoever the obligations of Copperweld under the first sentence of this Section 11.2.

ARTICLE XII. MISCELLANEOUS

Section 12.1: LSI agrees not to engage in the business conducted by Regal, nor to permit any subsidiary over which it has control to engage in such business, anywhere in the United States, for a period of five years following the Closing Date. This Section shall not be applicable to any present activity of LSI or any of its subsidiaries.

Section 12.2: Each party hereto shall bear its own costs and expenses in connectiion with this Agreement and the transaction contemplated by this Agreement.

Section 12.3: Legal title, equitable title and risk of loss with respect to the property and rights to be transferred hereunder shall not pass to Copperweld until the property or right is transferred at the closing hereunder.

Section 12.4: All notices required or permitted hereunder shall be in writing and shall be deemed to be properly given when personally delivered to the party entitled to receive the notice or when sent by certified or registered mail, postage prepaid, properly addressed to the party entitled to receive such notice at the address stated below:

LSI Attn: Mr. Robert L. Purcell
Chairman of the Board
Lear Siegler, Inc.
3171 South Bundy Drive
Santa Monica, Calif. 90406

Copperweld Attn: Mr. Phillip H. Smith
President
Copperweld Steel Company
Frick Building
Pittsburgh, Pennsylvania 15219

Section 12.5: This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Copperweld shall not assign this Agreement to any party without the prior written consent of LSI.

Section 12.6: This Agreement shall constitute the entire agreement between the parties hereto with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. This Agreement may not be released, discharged, abandoned, changed or modified in any manner, except by an instrument in writing signed on behalf of each of the parties hereto by their duly authorized officers or representatives. The failure of any party hereto to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, nor in any way to affect the validity of this Agreement or any part thereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

Section 12.7: The captions appearing in this Agreement are inserted only as a matter of convenience and as a reference and in no way define, limit or describe the scope or intent of this Agreement or any of the provisions hereof.

Section 12.8 This Agreement shall be construed and the rights of the parties hereunder shall be governed by the laws of the Commonwealth of Pennsylvania.

Section 12.9: Copperweld may substitute a subsidary as transferee of the assets of Regal by supplying the name thereof to LSI within a reasonable time prior to the closing.

IN WITNESS WHEREOF, each of the parties hereto has duly executed this Agreement in duplicate this 6th day of January, 1972.

LEAR SIEGLER, INC.

By: /s/ ROBERT L. PURCELL

COPPERWELD STEEL COMPANY

By: /s/ P. H. SMITH

	1971 NOVEMBER
CURRENT ASSETS	
Cash	$ (8,759)
Marketable Securities	
Receivables	
Commercial and other	1,251,433
Government	
	1,251,433
Allowances	4,766
	1,246,667
Inventories	
Raw materials	2,085,754
Work in process	
Finished goods	1,279,762
	3,365,516
Costs on defense contracts	
Less progress payments	
Current portion of real estate held for sale	
Prepaid expenses	86,488
Total current assets	4,689,912
REAL ESTATE HELD FOR SALE —Less Current Portion	
PROPERTY PLANT AND EQUIPMENT AT COST	
Land	
Buildings, improvements, machinery and equipment	5,245,061
Less depreciation and amortization	1,812,835
	3,432,226
OTHER ASSETS	
Investments—affiliates	
Patents—net	
Long-term receivables	
Sundry	
	$8,122,138
Working capital	2,983,854
Current ratio	2.7
Day's sales in A/R	30.3
Inventory turnover	4.0
Return on investment	21.7

	1971 NOVEMBER
CURRENT LIABILITIES	
Notes payable—banks & others	$
Current maturities of long-term debt	
Accounts payable	
Trade	1,109,085
Other	7,405
Dividends payable	
Income taxes (State & Federal)	335,886
Profit sharing contribution	
Company	
Employees	
Accrued liabilities	
Salaries, wages and commissions	131,799
Taxes (other than income taxes)	93,703
Other	28,180
Total current liabilities	1,706,058
DEFERRED LIABILITIES	187,538
LONG TERM DEBT	
5½%—15 year note	
7.95% note due 1988	
Mortgage and other notes payable	
Less current maturities	
INTERCOMPANY ACCOUNTS	
Amounts due to (from) affiliates	
Amounts due to (from) Corporate Office	
Amounts due to (from) unconsol. subs.	
INVESTMENT ACCOUNT—Corporate Office	5,860,112
MINORITY INTEREST IN CONSOL. SUBS	
STOCKHOLDERS' EQUITY	
Preferred stock	
Common stock	
Additional capital	
Retained earnings	
Current year's retained earnings	368,430
	6,228,542
Less: Treasury Stock	
	$8,122,100

COMPARATIVE STATEMENT OF EARNINGS

November 30, 1971

	1972	
NET SALES		
Commercial/Industrial	$6,271,802	100.0%
Government		%
Total net sales	6,271,802	100.0%
COST OF GOODS SOLD	5,025,648	80.1%
Gross profit	1,246,154	19.9%
OPERATING EXPENSES		
Advertising	1,613	.1%
Selling	169,713	2.7%
Administrative	194,006	3.0%
Group Office expense	23,046	.4%
Corporate Office expense	160,457	2.6%
	548,835	8.8%
Operating profit	697,319	11.1%
OTHER INCOME	910	%
OTHER DEDUCTIONS	(10,290)	(.2)%
MINORITY INTEREST		%
Earnings (before taxes)	708,519	11.3%
INCOME TAXES	340,089	5.4%
NET EARNINGS	$ 368,430	5.9%
Included above in costs and expenses:		
Depreciation and amortization	$ 143,775	2.3%
Interest expense		%
Profit sharing expense		%
Inter-divisional sales		%
State and local taxes based on income	28,200	.4%
Government backlog		
Number of employees	114	

PLAINTIFF'S EXHIBIT 214

COPPERWELD STEEL COMPANY

February 19, 1973

Mr. Kenneth K. Chalmers, Vice President
Continental Illinois National Bank & Trust Company
231 South LaSalle Street
Chicago, Illinois 60690

Dear Mr. Chalmers:

It is possible that you may be asked to consider supplying part or all of the financing needed by David F. Grohne for his entry into the manufacture and sale of tubing products. Our information is that the name he will probably use for this enterprise is The Independence Tube Company.

In February of 1972, this corporation bought the Regal Tube Company, Chicago, Illinois, from Lear Siegler, and at that time Mr. David F. Grohne was the acting head of the Regal Tube Company.

Mr. Grohne led us to believe that he would either continue at Regal Tube as President and Chief Operating Officer under our ownership, or work for Lear Siegler, and we are greatly concerned if he contemplates entering the structural tubing market now in competition with Regal Tube.

Not only is there a non-compete on the part of Lear Siegler in our pruchase agreement, but we specifically bought "all know-how, technical information, designs, plans, drawings, trade secrets, and inventions pertinent to the business of Regal."

In view of your potential interest in this enterprise, we want to put you on notice that under the above circumstances we intend to take any and all steps which are necessary to protect our rights under the terms of our purchase agreement, and to protect the know-how, trade secrets, etc., which we purchased from Lear Siegler.

Mr. Grohne has been put on notice in a similar fashion of our intention to fully protect our know-how, trade secrets, etc.

Very truly yours,

/s/ PHILLIP H. SMITH

Phillip H. Smith

PHS/pm

cc: F. L. Seamans, Esq., General Counsel
Eckert, Seamans, Cherin & Mellott
1000 Porter Building
Pittsburgh, Pennsylvania 15219

PLAINTIFF'S EXHIBIT 232

ECKERT, SEAMANS, CHERIN & MELLOTT
Attorneys At Law

January 26, 1973

Re: Regal Tube Company [Handwritten note: Independence Tube/Grohne File]

Mr. Barton Beek
O'Melveny & Myers
611 West Sixth Street
Los Angeles, California 90017

Dear Bart:

First of all, Bart, I want to say it is very pleasant to be using your name again and also to say that you will be interested that my son Dick is now in Los Angeles where he is working in the legal department of North American Rockwell. They are living in Palos Verdes.

Copperweld has learned that David F. Grohne is organizing a company called Independence Tube Company which will operate in competition with Regal. Copperweld is naturally going to follow this very closely because there is a non-compete as between Lear-Siegler and Copperweld and because the know-how and secret process information of Regal was transferred by Lear-Siegler to Copperweld.

I am sure that Lear-Siegler would want the spirit of the Copperweld deal to be kept inviolate so it occurred to me to ask whether you would care to make any inquiry at Lear-Siegler to see what information could be obtained regarding the intentions of Mr. Grohne. I assume that Lear-Siegler has no interest in Mr. Grohne's new venture.

I will appreciate it if you will make some inquiries on what Lear-Siegler knows about this and write me regarding it.

I regard our negotiation as one of the most pleasant ones I have ever had and I hope we will sometime meet again.

Best regards,

/s/ FRANK L. SEAMANS

FLS/GS

bcc: Mr. Phillip H. Smith
Mr. D. H. Deichmann
Mr. Bedford F. Foster

PLAINTIFF'S EXHIBIT 233

O'MELVENY & MYERS

March 20th, 1973

Frank L. Seamans, Esq.
Messrs. Eckert, Seamans, Cherin
& Mellott
10th Floor, Porter Buiding
Sixth Avenue and Grant Street
Pittsburgh, Pennsylvania 15219

Dear Frank:

Please excuse my long delay in giving you a written reply to your letter of January 26, 1973 regarding Dave Grohne.

It was nice to have a chance to talk to you on the telephone while you were here in the Los Angeles area about two weeks ago. This letter will confirm our conversation to the effect that neither LSI nor any of its senior officers (nor, to their knowledge, anyone else connected with LSI) has any interest of any nature whatsoever in Mr. Grohne's new venture.

We received inquiries from Bell, Boyd, Lloyd, Haddad & Burns of Chicago, who are representing Mr. Grohne, as to whether we had any information about the position Copperweld was taking. We have responded that we have no such information, but we have sent them a copy of the Agreement of Sale of Regal Tube Division between LSI and Copperweld.

I think you understand that the separation between LSI and Mr. Grohne was not altogether a happy one, and there is really no way that Lear Siegler can have any impact on Mr. Grohne's activities or on any possible disputes between him and your client.

Cordially,

Barton Beek
of O'Melveny & Myers

BB:zr
BCC: Messrs. Purcell and Campion

PLAINTIFF'S EXHIBIT 236

February 21, 1973

Mr. Robert Deacon, General Manager
Clearing Industrial District
Division of Kaiser Aetna
Suite 3940
One First National Plaza
Chicago, Illinois 60670

Dear Mr. Deacon:

It is possible that you may be asked to consider supplying part or all of the financing needed by David F. Grohne for his entry into the manufacture and sale of tubing products. Our information is that the name he will probably use for this enterprise is The Independence Tube Company.

In February of 1972, this corporation bought the Regal Tube Company, Chicago, Illinois, from Lear Siegler, and at that time Mr. David F. Grohne was the acting head of the Regal Tube Company.

Mr. Grohne led us to believe that he would either continue at Regal Tube as President and Chief Operating Officer under our ownership, or work for Lear Siegler, and we are greatly concerned if he contemplates entering the structural tubing market now in competition with Regal Tube.

Not only is there a non-compete on the part of Lear Siegler in our purchase agreement, but we specifically bought "all know-how, technical information, designs, plans, drawings, trade secrets, and inventions pertinent to the business of Regal."

In view of your potential interest in this enterprise, we want to put you on notice that under the above circumstances we intend to take any and all steps which are necessary to protect our rights under the terms of our purchase agreement, and to protect the know-how, trade secrets, etc., which we purchased from Lear Siegler.

Mr. Grohne has been put on notice in a similar fashion of our intention to fully protect our know-how, trade secrets, etc.

Very truly yours,

Phillip H. Smith

PHS/pm

cc: F. L. Seamans, Esq., General Counsel
Eckert, Seamans, Cherin & Mellott
1000 Porter Building
Pittsburgh, Pennsylvania 15222

PLAINTIFF'S EXHIBIT 347

REGAL TUBE COMPANY

September 19, 1974

Mr. J. R. Scott
Vice President-Sales, Chicago District
United States Steel Corporation
Post Office Box 1283
208 South LaSalle Street
Chicago, Illinois 60690

Dear Mr. Scott:

Please find attached copies of both shipping notice and invoice to Independence Tube that were received at Regal Tube in error on September 17, 1974. Bill Gustafson of your office has been contacted and advised us of proper disposition.

It is a source of great concern to Regal Tube, which has had a long association with U.S. Steel, to suffer reduced allocations only to find that Independence Tube, which has never established an allocation, is receiving shipments of steel from your Gary works.

Bill Gustafson's letter of September 9, 1974 to Bedford Foster details the problems that U.S. Steel has encountered in the Gary area but reaffirms U.S. Steel's interest in participating in a larger share of Regal's known growing market potential stating, "The road will not be smooth but we are confident we will become a still better supplier to the Midwest Industry and we hope Regal Tube." As of August 31, 1974, U.S. Steel's delinquent tonnage to Regal Tube was 9,823 tons. How can U.S. Steel increase its participation as a supplier to Regal Tube by shipping to companies who have not established an allocation?

Very truly yours,
/s/ HERMAN H. PHILIPP
Herman H. Philipp
Vice President and General Manager

HHP: jg
cc: Mr. P. H. Smith
Mr. B. F. Foster, Jr.

PLAINTIFF'S EXHIBIT 393

COPPERWELD STEEL COMPANY

January 16, 1973

Mr. Frank L. Seamans
Eckert, Seamans, Cherin & Mellott
1000 Porter Building
Pittsburgh, Pennsylvania 15219

Dear Zeke:

Re: Independence Tube—Regal Tube

Dick Deichmann was advised last week that Mr. David Grohne, former president of Regal Tube Company, is going into business, forming a new company, The Independence Tube Company.

Article XII, Section 12.1, Page 37, of the Close Papers, prohibits LSI from entering the tubing business for a period of five years. No reference is made, of course, to Mr. Grohne. However, as I reflect on this matter, I wonder whether it was ever the intention of Mr. Grohne to stay with LSI, as he indicated. We know he did not sell his home in Chicago, and returned to Chicago on LSI's behalf to act as a coordinator on imported steels, after spending several months at LSI's headquarters in Santa Monica. Grohne, of course, is highly knowledgeable of all of our internal affairs at Regal, and also our customer lists. A combination of Grohne and Nostrand, who left LSI to join Welded Tube, could create a problem for Regal if they chose to use their knowledge in an unethical fashion.

By copy of this letter I am asking Dick to get up-to-date financial information on the formation of Independence Tube, and I think we should track this situation carefully.

Sincerely,

Phillip H. Smith

PHS/pm
cc: Mr. D. H. Deichmann
Mr. Bedford F. Foster

PLAINTIFF'S EXHIBIT 394

February 1, 1973

Re: Regal—Grohne

Phillip H. Smith
D. H. Deichmann
Bedford F. Foster
C. A. Wilson

Art Wilson and I believe that the "non-compete" cannot be used against Grohne because he did not sign it, but that Lear-Siegler sold to Copperweld "All know-how, technical information, designs, plans, drawings, trade secrets, and inventions pertinent to the business of Regal."

Accordingly, if Grohne uses or threatens to use any of the information or material in the above quotation we will have grounds on which to file suit to stop him.

The difficulty will be in proving that he is using some of the proprietary information or material which now belongs to Copperweld.

In any event, it would be well for us to let it be known that we are going to follow his activities like a hawk and will file suit to enjoin him if he uses any of the information or materials Copperweld purchased from Lear-Siegler.

Probably information about customers is the most significant here.

I have not yet had a reply from Barton Beek and I will be interested in what information your investigator turns up.

F. L. S.

FLS:GS

PLAINTIFF'S EXHIBIT 395

ECKERT, SEAMANS, CHERIN & MELLOTT
Attorneys At Law

February 2, 1973

Mr. Phillip H. Smith, President
Copperweld Steel Company
322 Frick Building
Pittsburgh, Pennsylvania 15219

Dear Phil:

Enclosed is a draft of a letter to Mr. David F. Grohne and a draft of a letter to financing sources which Art Wilson and I thought you might consider. Art will discuss this with you at any time you wish.

Best regards,

/s/ ZEKE

FLS:pak

Enclosures

Draft of 2/2/73

Dear Mr. Grohne:

We understand that you are considering engaging in the tubing business in competition with Regal Tube Company which, as you know, we purchased from Lear Siegler last February.

We want you to know that among the items we purchased from Lear Siegler was:

> "All know-how, technical information, designs, plans, drawings, trade secrets, and inventions pertinent to the business of Regal."

When we purchased Regal Tube from Lear Siegler, we understood that you would either remain at Regal Tube under our ownership or work with Lear Siegler. Nothing was said about the possibility of your entering into a competing business.

You should also know that the purchase agreement contains the following provision:

> "LSI agrees not to engage in the business conducted by Regal, nor to permit any subsidiary over which it has control to engage in such business, anywhere in the United States, for a period of five years following the Closing Date. This Section shall not be applicable to any present activity of LSI or any of its subsidiaries."

We are writing you to advise that if you do in fact engage in the manufacture and sale of tubing products in competition with Regal Tube, we will take any and all steps which are necessary, including the institution of suit, to protect our rights under the terms of the purchase agreement and to protect the "know-how, technical information, designs, plans, drawings, trade secrets, and inventions pertinent to the business of Regal", which we purchased from Lear Siegler.

Very truly yours,

PLAINTIFF'S EXHIBIT 408

February 19, 1973

Mr. C. E. Robinson
1280 North Port Drive
Siesta Key
Sarasota, Florida

Dear Mr. Robinson:

It is possible that you may be asked to consider supplying part or all of the financing needed by David F. Grohne for his entry into the manufacture and sale of tubing products. Our information is that the name he will probably use for this enterprise is The Independence Tube Company.

In February of 1972, this corporation bought the Regal Tube Company, Chicago, Illinois, from Lear Siegler, and at that time Mr. David F. Grohne was the acting head of the Regal Tube Company.

Mr. Grohne led us to believe that he would either continue at Regal Tube as President and Chief Operating Officer under our ownership, or work for Lear Siegler, and we are greatly concerned if he contemplates entering the structural tubing market now in competition with Regal Tube.

Not only is there a non-compete on the part of Lear Siegler in our purchase agreement, but we specifically bought "all know-how, technical information, designs, plans, drawings, trade secrets, and inventions pertinent to the business of Regal."

In view of your potential interest in this enterprise, we want to put you on notice that under the above circumstances we intend to take any and all steps which are necessary to protect our rights under the terms of our purchase agreement, and to protect the know-how, trade secrets, etc., which we purchased from Lear Siegler.

Mr. Grohne has been put on notice in a similar fashion of our intention to fully protect our know-how, trade secrets, etc.

Very truly yours,

Phillip H. Smith

PHS/pm

cc: F. L. Seamans, Esq., General Counsel
Eckert, Seamans, Cherin & Mellott
1000 Porter Building
Pittsburgh, Pennsylvania 15219

PLAINTIFF'S EXHIBIT 411

[Handwritten note: read to B. F. Foster at 5:14 p., 11/14/73 and put in mail to Mr. Foster—Jab]

Copperweld Pgh
VU Infomaster, 1-0296330313 11/14/75
TLK Yoderco Clv
01 Cleveland Ohio Nov. 14
TWX 7106642022 Copperweld Pgh
Mr. Phillip H. Smith, Chairman & President

Rumors persist that Ohio Seamless Division of Copperweld is about to place major orders for two pipe mills and associated equipment, including draw benches with at least one of the systems to be located in Iowa, presumably to serve the farm equipment marketplace.

We are in the awkward position of having offered to participate in such programs and continue to receive reports that the vendors considered for those important capital additions to your corporate productivity are Wean McKay and Abbey-Etna.

I'd like to suggest that the correspondence received from your company over your signature in December and October of 1973 regarding a disagreement between your company and that of Independence Tube and a Mr. David Grohne involved very seriously the Yoder Company. It was our pleasure to be able to report to you in December of 1973 that we at the Yoder Company were not participating with Mr. Grohne in the corporation to compete directly with your Copperweld-Regal Tube operations.

Your company certainly pulled no punches in alerting the Yoder Company to possible litigation resulting from our working with Mr. Grohne on that project. That correspondence directly affected our relationship with that program.

We are now curious and concerned about the apparent dedication on the part of your company to the possible contract agreement with Abbey-Etna who was, indeed, the company who supplied the equipment to Mr. Grohne, which is in and operating now.

We do not expect special treatment in this matter but we want the opportunity to participate with your company in your major acquisition. May we meet with you to discuss the matter and to determine whether Copperweld should, indeed, consider seriously inclusion of the Yoder Company's capabilities in your important manufacturing plans.

G. L. Temple, Vice President
Sales & Marketing
Yoderco

PLAINTIFF'S EXHIBIT 430

ECKERT, SEAMANS, CHERIN & MELLOTT
Attorneys At Law

May 11, 1973

Re: Grohne

Mr. Phillip H. Smith
Copperweld Corporation
322 Frick Building
Pittsburgh, Pennsylvania 15219

Dear Phil:

Re your letter of April 23, 1973, I would keep this under surveillance so that we know when we can make our contention that Grohne is utilizing information and know-how which we purchased from Lear Siegler.

Very truly yours,

/s/ ZEKE

FLS:GS

COPPERWELD STEEL COMPANY

April 23, 1973

Mr. F. L. Seamans
Eckert, Seamans, Cherin & Mellott
1000 Porter Building
Pittsburgh, Pennsylvania 15219

Dear Zeke:

Re: David F. Grohne

I received a call Thursday from Hale Prietsch that they have essentially completed their study. Mr. C. E. Robinson is the financial partner for Independence Tube, and shows as the only other director other than Mr. and Mrs. Grohne. Robinson's five year non-compete agreement with LSI ran out Wednesday.

It would appear to me that there is little we could do to block Robinson going into business. I still remain convinced, however, that there is plenty we can do to block Grohne. Recognizing that Robinson is now 73 years old, I also wonder if he really wants to undertake a fight at this time.

Sincerely,

/s/ PHIL

Phillip H. Smith

PHS/pm

Zeke: We wrote Mr. Robinson.

Phil

PLAINTIFF'S EXHIBIT 443

February 19, 1973

Mr. R. J. Wean, Jr., President
Wean-United, Inc.
3 Gateway Center
Pittsburgh, Pennsylvania 15222

Dear Mr. Wean:

It is possible that you may be asked to consider supplying part or all of the financing needed by David F. Grohne for his entry into the manufacture and sale of tubing products. Our information is that the name he will probably use for this enterprise is The Independence Tube Company.

In February of 1972, this corporation bought the Regal Tube Company, Chicago, Illinois, from Lear Siegler, and at that time Mr. David F. Grohne was the acting head of the Regal Tube Company.

Mr. Grohne led us to believe that he would either continue at Regal Tube as President and Chief Operating Officer under our ownership, or work for Lear Siegler, and we are greatly concerned if he contemplates entering the structural tubing market now in competition with Regal Tube.

Not only is there a non-compete on the part of Lear Siegler in our purchase agreement, but we specifically bought "all know-how, technical information, designs, plans, drawings, trade secrets, and inventions pertinent to the business of Regal."

In view of your potential interest in this enterprise, we want to put you on notice that under the above circumstances we intend to take any and all steps which are necessary to protect our rights under the terms of our purchase agreement, and to protect the know-how, trade secrets, etc., which we purchased from Lear Siegler.

Mr. Grohne has been put on notice in a similar fashion of our intention to fully protect our know-how, trade secrets, etc.

Very truly yours,

Phillip H. Smith

PHS/pm

cc: F. L. Seamans, Esq., General Counsel
Eckert, Seamans, Cherin & Mellott
1000 Porter Building
Pittsburgh, Pennsylvania 15219

PLAINTIFF'S EXHIBIT 446

COPPERWELD STEEL COMPANY

February 19, 1973

Mr. J. J. Mullen, President
Abbey Etna Machine Company
3400 East Indiana Avenue
Perrysburg, Ohio 43551

Dear Mr. Mullen:

It is possible that you may be asked to consider supplying part or all of the financing needed by David F. Grohne for his entry into the manufacture and sale of tubing products. Our information is that the name he will probably use for this enterprise is The Independence Tube Company.

In February of 1972, this corporation bought the Regal Tube Company, Chicago, Illinois, from Lear Siegler, and at that time Mr. David F. Grohne was the acting head of the Regal Tube Company.

Mr. Grohne led us to believe that he would either continue at Regal Tube as President and Chief Operating Officer under our ownership, or work for Lear Siegler, and we are greatly concerned if he contemplates entering the structural tubing market now in competition with Regal Tube.

Not only is there a non-compete on the part of Lear Siegler in our purchase agreement, but we specifically bought "all know-how, technical information, designs, plans, drawings, trade secrets, and inventions pertinent to the business of Regal."

In view of your potential interest in this enterprise, we want to put you on notice that under the above circumstances we intend to take any and all steps which are necessary to protect our rights under the terms of our purchase

agreement, and to protect the know-how, trade secrets, etc., which we purchased from Lear Siegler.

Mr. Grohne has been put on notice in a similar fashion of our intention to fully protect our know-how, trade secrets, etc.

Very truly yours,

/s/ PHILLIP H. SMITH

Phillip H. Smith

PHS/pm

cc: F. L. Seamans, Esq., General Counsel
Eckert, Seamans, Cherin & Mellott
1000 Porter Building
Pittsburgh, Pennsylvania 15219

PLAINTIFF'S EXHIBIT 447

ABBEY ETNA MACHINE COMPANY

March 3, 1973

Copperweld Steel Company
Executive Offices
Frick Building
Pittsburgh, Pennsylvania 15219

Attention: Mr. Phillip H. Smith
President

Gentlemen

We wish to acknowledge receipt of your letter dated February 19, 1973 relating to Mr. David F. Grohne and The Independence Tube Company.

Abbey Etna Machine Company, among other tube mill manufacturers has offered The Independence Tube Company, represented by Mr. David F. Grohne, a tube mill for the manufacture of structural products. Our offer did not include the supply of any capital or medium term financing for the purchase of this equipment. It is the corporate policy of The Abbey Etna Machine Company not to participate with its U.S. customers as a share holder or lender, but has on occasion provided commercial financing, i.e., Commercial Credit Corporation or The C.I.T. Corporation, to assist its customers in their purchase of our products.

We sincerely hope that the above will clarify our position on this subject.

Very truly yours,

ABBEY ETNA MACHINE
COMPANY

/s/ JOHN J. MULLEN

John J. Mullen
President

JJM/

PLAINTIFF'S EXHIBIT 448

REGAL TUBE COMPANY

November 9, 1973

Mr. Phillip H. Smith
President and Chairman
Copperweld Steel Company
322 Frick Building
Pittsburgh, Pennsylvania
15219

[Handwritten note: For Action By
Mr. F. L. Seamans
Reviewed 11-12-73
a) FLS to write A-E and ask for confirmation
b) Advise A-E that COS will protect its interest against both Grohne and A-E.
PHS 11-13-73]

Dear Phil:

I have learned from an unimpeachable source that Dave Grohne has purchased a weld mill. The mill is an Abbey Etna 7X unit, which will produce a 6" square (7⅝" O.D.) to .280" wall. This, of course, covers a most important part of our size range.

The unit is being built by the Abbey Etna Machine Co., Inc. of Perrysburg, Ohio, which is the company that built our newest mill. Mr. Jack Mullins, President of Abbey Etna, assured me in April or May of this year that they would certainly not be doing business with Mr. Grohne. This was shortly after receiving your notification.

The mill was ordered in July of this year, and is scheduled for March 1974 delivery (this seems rather fast).

As soon as I have more information on the subject, I will let you know.

Sincerely,

/s/ BEDFORD

Bedford F. Foster, Jr.

BFFjg

PLAINTIFF'S EXHIBIT 449

Re: David F. Grohne
Independence Tube Company

Dear Mr. Mullins:

By letter of February 19, 1973, we advised you that if Mr. Grohne entered the structural tubing market in competition with Regal Tube which we bought from Lear Siegler, we would take every legal means to be sure that he was not using any of the know-how technical information or trade secrets which he had learned while at Regal and which we had purchased from Lear Siegler when we acquired Regal.

Mr. Grohne is of course free to enter the structural tubing market or any other business so long as he does not violate our purchase agreement with Lear Siegler or utilize any of the know-how technical information or trade secrets which now belong to us.

Inasmuch as we have been told that you are considering selling equipment to Mr. Grohne, we thought you should be apprised that our attitude remains the same as expressed in our letter of February 19, 1973.

Very truly yours,

ECKERT, SEAMAN'S, CHERIN & MELLOTT
Attorneys At Law

November 19, 1973

Re: Grohne

Mr. Phillip H. Smith
Copperweld Corporation
322 Frick Building
Pittsburgh, Pennsylvania 15219

Dear Phil:

We must be careful not to open ourselves up to an anti-trust suit by Grohne that we have harassed potential financial and equipment suppliers from doing business with him, thus restricting competition.

I think something like the enclosed would be all right for a letter to Abbey Etna.

Very truly yours,

/s/ Zeke

FLS:GS
Enclosure

cc: Bennett Sack (w/enclosures)

PLAINTIFF'S EXHIBIT 478

ECKERT, SEAMANS, CHERIN & MELLOTT
Attorneys At Law

June 7, 1973

Re: Grohne

Mr. Phillip H. Smith
Copperweld Corporation
322 Frick Building
Pittsburgh, Pennsylvania 15219

Dear Phil:

Under our theory we would enjoin him from using the trade secrets sold by Lear Siegler to Copperweld. Therefore, there is not much we can do until he starts to operate or solicit customers, other than make known our intentions which has already been done. He should therefore be kept under continued surveillance and once he starts to operate or solicit business we should pounce on him.

I have never talked to his lawyers in Chicago and I do not see much future in doing so, do you?

Very truly yours,

/s/ ZEKE

FLS:GS

PLAINTIFF'S EXHIBIT 479

ECKERT, SEAMANS, CHERIN & MELLOTT
Attorneys At Law

June 13, 1973

Bedford F. Foster
Regal Tube Company
7401 South Linder
Chicago, Ill. 60633

Re: Grohne

Dear Bedford:

Neither Phil nor I can see any reason for me to talk with Grohne's lawyers. I would only be asked to make concessions. Do you know of any reason?

I would keep my ear to the ground on this matter, however, and if he starts to solicit customers or starts to employee any manufacturing technique which we purchased from Lear-Siegler, we should be on him like a hawk.

Best Regards,

/s/ Zeke

Frank L. Seamans

FLS:plg
cc: Phillip H. Smith

PLAINTIFF'S EXHIBIT 481

ECKERT, SEAMANS, CHERIN & MELLOTT
Attorneys At Law

December 13, 1973

Re: Regal—Grohne

Mr. Phillip H. Smith
Copperweld Corporation
322 Frick Building
Pittsburgh, Pennsylvania 15219

Dear Phil:

Enclosed is a memorandum prepared by Pete Baggerman reviewing this situation. Enclosed also is that portion of the Opinion in *Telex* v. *I.B.M.* dealing with the pirating by Telex of I.B.M. employees.

My own judgment is that we would probably not succeed if we would institute an action to enjoin Grohne now from (a) stealing our employees, (b) entering into competition with us, or (c) both.

If he should take further employees and/or do something to utilize the know-how or secret processes we bought from Lear Siegler, our case would be better.

Instituting an action now, even though unsuccessful, might have some good effects but I am afraid we would be met by a counterclaim that would pose serious problems.

After you have had a chance to look at this material, please call me and we will discuss it.

Grohne did not have an employment contract with Lear Siegler.

Very truly yours,

/s/ ZEKE

FLS:GS
Enclosures 2

PLAINTIFF'S EXHIBIT 579

AFFIDAVIT

STATE OF OHIO,
COUNTY OF RICHLAND, SS:

The undersigned Bedford F. Foster, Jr. being first duly sworn, does hereby state that he is Vice President and General Manager of Ohio Steel Tube Company, an Ohio Corporation, with its principal place of business in Shelby, Ohio, and a wholly owned subsidiary of Copperweld Corporation; that in such capacity he has sole responsibility and authority over the entire operations of said Ohio Steel Tube Company, including but not limited to sales, engineering, production, purchasing of raw materials, research and development of new products and negotiation of labor agreements; and that generally in all material respects the operations of Ohio Steel Tube Company are controlled in Shelby, Ohio. Further affiant states not.

/s/ BEDFORD F. FOSTER, JR.

Bedford F. Foster, Jr.
Vice President and General Manager
Ohio Steel Tube Company

Sworn to and subscribed in my presence this 16th day of Sept. 1, 1975.

ROBERT E. JIMISON
Notary Public, Riceland County, Ohio
My Commission Expires March 16, 1980

/s/ ROBERT E. JIMISON
Notary Public

PLAINTIFF'S EXHIBIT 654

April 22, 1972

Continental Illinois National Bank
and Trust Company of Chicago
231 South La Salle Street
Chicago, Illinois 60690

Attention: Mr. Donald B. Baer
Vice President

Gentlemen:

Enclosed is our presentation to you outlining the concept of our company and an explanation of the market size and growth prospects, the competitive situation, our manufacturing process, and our financial projections.

A significant opportunity exists in the structural tubing market, and it is imperative that we proceed immediately to capitalize on it before it is discovered and seized by another firm.

We request your approval of a five year term loan in the amount of $1,900,000 to be used for the purpose of financing the machinery and equipment required for our structural tube manufacturing company. 50% of the loan is to be repaid in installments during the five-year period with the remaining 50% due at the expiration of the five-year period.

It is necessary that we have a firm commitment from you as soon as possible, since this commitment will be needed for purposes of assuring the tube mill manufacturer that funds will be available for payment to him at such time as the equipment is operating on an acceptable production basis. The commitment should provide for the loan between July 1, 1973 and December 31, 1973.

We further request your approval of a line of credit not to exceed the lesser of $1,000,000, or 60% of the aggregate inventory and accounts receivable. This line of credit will be

needed from July 1, 1973 until the due date of the term loan. We will also need a provision to allow us to utilize this credit during the period from July 1, 1973 to the take down of the term loan for purposes of making required payments to equipment suppliers prior to the mill acceptance.

Very truly yours,

/s/ DAVID F. GROHNE

Enclosure

PLAINTIFF'S EXHIBIT 718

COPPERWELD STEEL COMPANY

February 21, 1973

Mr. John Oelerich, Executive Vice President
Curto, Reynolds & Oelerich, Inc.
Suite 2475
Two First National Plaza
Chicago, Illinois 60670

Dear Mr. Oelerich:

It is possible that you may be asked to consider supplying part or all of the financing needed by David F. Grohne for his entry into the manufacture and sale of tubing products. Our information is that the name he will probably use for this enterprise is The Independence Tube Company.

In February of 1972, this corporation bought the Regal Tube Company, Chicago, Illinois, from Lear Siegler, and at that time Mr. David F. Grohne was the acting head of the Regal Tube Company.

Mr. Grohne led us to believe that he would either continue at Regal Tube as President and Chief Operating Officer under our ownership, or work for Lear Siegler, and we are greatly concerned if he contemplates entering the structural tubing market now in competition with Regal Tube.

Not only is there a non-compete on the part of Lear Siegler in our purchase agreement, but we specifically bought "all know-how, technical information, designs, plans, drawings, trade secrets, and inventions pertinent to the business of Regal."

In view of your potential interest in this enterprise, we want to put you on notice that under the above circumstances we intend to take any and all steps which are neces-

sary to protect our rights under the terms of our purchase agreement, and to protect the know-how, trade secrets, etc., which we purchased from Lear Siegler.

Mr. Grohne has been put on notice in a similar fashion of our intention to fully protect our know-how, trade secrets, etc.

Very truly yours,

/s/ PHILLIP H. SMITH

Phillip H. Smith

PHS/pm

cc: F. L. Seamans, Esq., General Counsel
Eckert, Seamans, Cherin & Mellott
1000 Porter Building
Pittsburgh, Pennsylvania 15219

PLAINTIFF'S EXHIBT 730

INDEPENDENCE TUBE CORPORATION

May 22, 1973

Mr. John J. Mullen, President
Abbey Etna Machine Company
East Indiana Avenue
Perrysburg, Ohio 43551

Dear Jack:

In confirmation of our discussions we are enclosing the following documents;

1. Independence Tube Corporation purchase order #101, to Abbey Etna Machine Company, covering the 7 X R. F. Weld Tube Mill.

2. Independence Tube Corporation Balance Sheet dated December 31, 1972.

3. Cash Flow Statement covering the period through June 30, 1974, the projected acceptance date.

4. Master Lease Agreement with Continental Illinois Leasing Corporation dated November 15, 1972.

5. Master Lease Agreement extension dated January 22, 1973.

Based on your quotation, we have assumed that the equipment will be delivered in March 1974. We would appreciate a review and confirmation of the delivery date as soon as practical so that we can plan accordingly.

We certainly look forward to working with you again on this mill project. After you have finished reviewing the lease agreement and the extension, please return them to us.

Very truly yours,

/s/ DAVID F. GROHNE

David F. Grohne
President

DFG:mg

PLAINTIFF'S EXHIBIT 740

INDEPENDENCE TUBE CORPORATION

January 15, 1974

Memo to file:

RE: Telephone conversation between Mr. Jack Mullen, Abbey Etna Machine Co. and Phillip Smith, Cooperweld Corp. as related to D. Grohne by Jack Mullen on 1-15-74

The telephone conversation took place on 12-13-73 according to notes read to me by Jack Mullen. Smith called and was questioning whether Abbey Etna was furnishing the mill for Independence Tube and Mullen confirmed that they were doing so. Smith was furious and attempted to convince Mullen that it was illegal for them to furnish the mill because Copperweld had a non-compete agreement with Lear Siegler, they had purchased the trade secrets of Regal and that it was illegal for Independence to acquire this machinery for making tubing. Mullen informed him that the machinery was a duplicate of a mill they had furnished to a Canadian competitor and also that they were quoting the same mill to another competitor in Canada at this time. He also told Smith that there were no trade secrets that he knew of used in the manufacture of welded steel tubing and that the majority of the people in the business have worked for two or more competing companies in the industry—(it is common in this industry for employees to compete with their former employer). He told Smith that the mill sale was a normal commercial transaction which they entered into in competition with the other tube mill manufacturers. Smith also discussed the possibility of Independence using secret customer lists to which Mullen replied that everyone in the business knows who the customers are. Smith was particularly upset with what he felt was the theft of employees

from Regal and Mullen informed him that people in the industry have a tendency to be somewhat transient.

Mullen advised me that he would send us a copy of the letter he received from Copperweld in early December. He said he had discussed the problem with their attorney and that as a result of the telephone conversation with Smith they did not send a written reply to Copperweld.

By /s/ D. GROHNE
D. Grohne

PLAINTIFF'S EXHIBIT 995

IN THE

United States District Court

For The Western District of Pennsylvania

COPPERWELD STEEL CORPORATION, a Pennsylvania corporation,

Plaintiff

vs.

IMETAL, a French corporation,

Defendant

Civil Action No. 75-1119

PROCEEDINGS

Hearing on Motion for Preliminary Injunction in the above-entitled action, commencing on September 16, 1975, Pittsburgh, Pennsylvania, before Honorable John L. Miller, Senior District Judge.

Marilyn Brown
Marion C. Wike
Official Reporters

VOLUME 2—September 16, 1975

that have an effect on the competition that Copperweld wants as a purchaser of raw material?

A Yes, I think so, yes. I think in the position we are in today, while we are able to maintain a very fair stance with our suppliers, we do see to it that the raw materials we are buying are being bought at the lowest possible cost. I think that we do that and maintain a very fair balance with our suppliers.

I think in that situation here, I think we would be also then exposed to ending up with what I would call a directed supplier arrangement, "You will take such and such from so and so."

Q When you spoke before of your carefully cultivated relationship with the suppliers, you don't mean to indicate you don't make them be competitive in their supply position with Copperweld, do you?

A Mr. Morgan, we know how to be competitive and we are competitive every day of the week.

Q On both the buying side and selling side?

A Yes, sir, we do.

Q Does that same freedom as I have just indicated come over to the selling side; you need to be in a position to make quick decisions and appropriate moves in order to remain competitive on the sales side of the market too?

A That is right. That it why we delegate a great deal of authority to our divisions. We leave decisions on marketing, procurement, at the division level. We maintain oversight, but those decisions have to be made at the division level, so you can get prompt responses to the marketplace.

Q So, basically—

A Market demand.

Q Basically, your philosophy is one of decentralized management; to let your people in the field react to the market?

A Absolutely.

I think one of the greatest scholars of economics, Alfred P. Sloan says one thing he taught in his General Motor's experience is decentralized management and we practice that in Copperweld. We think that is fundamental.

Q Would that philosophy be disrupted, if you were a part of an Imetal group even for a short period of time?

A That is hard to predict. The thing that is somewhat distrubing, as we read the Imetal report and the Director and Chairman's letters, the point is stressed that the centralized control is going to be there. I think once you become centralized, it would be control coming from Paris or some other place, wherever the control happens to be.

I think you are going to lose some flexibility and responsiveness at the field level, the divisional level.

MR. MORGAN: Thank you.

PLAINTIFF'S EXHIBIT 1057

Draft of 2/2/73

Gentlemen:

We have heard that you are considering supplying part or all of the financing needed by David F. Grohne for his entry into the manufacture and sale of tubing products. Our information is that the name he will probably use for this enterprise is The Independence Tube Company.

In February of 1972, this corporation bought the Regal Tube Company, Chicago, Illinois, from Lear Siegler and at that time Mr. David F. Grohne was the acting head of the Regal Tube Company.

Mr. Grohne led us to believe that he would either continue at Regal Tube under our ownership or work for Lear Siegler, and we are greatly concerned if he contemplates entering the structural tubing market now in competition with Regal Tube.

Not only is there a non-compete on the part of Lear Siegler in our purchase agreement but we specifically bought "all know-how, technical information, designs, plans, drawings, trade secrets, and inventions pertinent to the business of Regal."

In view of your potential interest in this enterprise, we want to put you on notice that under the above circumstances we intend to take any and all steps which are necessary to protect our rights under the terms of our purchase agreement and to protect the know-how, trade secrets, etc. which we purchased from Lear Siegler.

Very truly yours,

PLAINTIFF'S EXHIBIT 1057

Draft of 2/2/73

Dear Mr. Grohne:

We understand that you are considering engaging in the tubing business in competition with Regal Tube Company which, as you know, we purchased from Lear Siegler last February.

We want you to know that among the items we purchased from Lear Siegler was:

> "All know-how, technical information, designs, plans, drawings, trade secrets, and inventions pertinent to the business of Regal."

When we purchased Regal Tube from Lear Siegler, we understood that you would either remain at Regal Tube under our ownership or work with Lear Siegler. Nothing was said about the possibility of your entering into a competing business.

You should also know that the purchase agreement contains the following provision:

> "LSI agrees not to engage in the business conducted by Regal, nor to permit any subsidiary over which it has control to engage in such business, anywhere in the United States, for a period of five years following the Closing Date. This Section shall not be applicable to any present activity of LSI or any of its subsidiaries."

We are writing you to advise that if you do in fact engage in the manufacture and sale of tubing products in competition with Regal Tube, we will take any and all steps which are necessary, including the institution of suit, to protect our rights under the terms of the purchase agreement and to protect the "know-how, technical information, designs, plans, drawings, trade secrets, and inventions pertinent to

the business of Regal", which we purchased from Lear Siegler.

Very truly yours,

PLAINTIFF'S EXHIBIT 1060

COPPERWELD

Interorganization Correspondence

To: P. H. Smith

Date: 2/23/73
From: Pat Morgan
Subject: David F. Grohne

Mr. Smith:

At appoximately 1:50 p.m. this afternoon, Mr. Grohne called, person to person, to speak with you. When I explained to the operator that you were out of the country, Mr. Grohne began to ask when you would return, could you be reached, etc. At this point, I asked the operator if Mr. Grohne would speak with me as I was Mr. Smith's secretary. Mr. Grohne agreed to this, and I explained to him that I felt this would be better than trying to answer questions through a telephone operator.

I told Mr. Grohne you had left this morning for Japan & would not be back in the office until March 19. He asked if you could be reached anywhere and I told him you would be staying at the Palace Hotel. Mr. Grohne said he would very much like to talk with you, and at this point I suggested that I try to reach you in Japan and ask you to return his call. Mr. Grohne said he would very much appreciate this, and said he could be reached at 312: 246-5077. [Handwritten note: I do not intend to call him, Zeke, I think it would be a mistake.]

Mr. Grohne then stated that his Counsel had tried unsuccessfully to reach our Counsel yesterday, and had been advised that Mr. Seamans was also out of the country. I told Mr. Grohne that this was so, and explained that Mr. C. Arthur Wilson of our General Counsel's office would be handling our matters in Mr. Seaman's absence. Mr. Grohne asked if I would have Mr. Wilson call either Mr. Victor Grimm or Mr. John Laughlin of Bell, Boyd, Lloyd, etc., at

312: 263-1131. I said that I would, and this request was made to Mr. Wilson.

Mr. Grohne thanked me for my help, and I told him I would see that you received his message.

/s/ PAT
Patricia A. Morgan

[Handwritten note: Zeke: I think that Art can handle this; we may want to call him tonight, ie. Monday a.m. Pittsburgh and tell him to keep the pressure on. Phil S.]

PLAINTIFF'S EXHIBIT 1194

KIRKLAND & ELLIS

May 3, 1974

Frank L. Seamans, Esq.
Eckert, Seamans, Cherin & Mellot
42nd Floor, 600 Grant Street
Pittsburgh, Pennsylvania 15219

Re: Regal Tube Company

Dear Zeke:

At our last meeting, we agreed to exchange views on the steps which might be taken by Regal Tube Company, as well as by other operations of Copperweld, to help protect their trade secrets and other confidential business information and activities. I sincerely apologize for taking longer than anticipated in giving you our views, but I've been involved in emergency injunction proceedings for several weeks now and simply haven't been able to give this matter the attention it required.

In preparation for setting forth our thoughts on these matters, we have researched the applicable law pertaining both to trade secrets and other types of confidential information and to agreements not to compete, although our analysis of the law is set forth only summarily in this letter. We have also talked to Bedford Foster and visited the Regal plant in order to see what security measures have been followed in the past and what might be adopted for the future.

In making our recommendations, I should emphasize that we have not attempted to determine whether any particular proposal is worth the cost, in terms of the time and effort of management to put it into effect, when measured against the value of the business information or activity sought to be protected. Only the Regal and Copperweld management can make such a determination. Our purpose is simply to sug-

gest various steps which we think should be considered to deal with the problem.

Before turning to those steps, I think it worthwhile to recapitulate the applicable legal principles. Although I'm confident you're quite familiar with those principles, I've set them out since I assume you may wish to pass this letter along to Phil Smith, Bedford Foster and possibly others.

In my opinion, the best, and certainly the most concise, statement of the law is set forth in the American Law Institute's *Restatement of the Law of Torts*, which observes in Section 759 that:

> "One who, for the purpose of advancing a rival business interest, procures by improper means information about another's business is liable to the other for the harm caused by his possession, disclosure or use of the information."[1]

It should be noted that the protection accorded by this rule "applies to information about one's business whether or not it constitutes a trade secret" in the strict sense of that term (4 *Restatement of Torts*, p. 23). Thus, protection is accorded not only to such things as secret formulae, patterns and designs, but also to "the state of one's accounts, the amount of his bid for a contract, his sources of supply, his plans for expansion or retrenchment, and the like." (*Id.* at p. 24.) Indeed, the *Restatement* comments that, "There are no limitations as to the type of information included except that it relate to matters in his business." (*Ibid.*)

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[1]The rule set forth in the *Restatement* has been followed in numerous judicial decisions. *See, e.g., Sperry Rand Corporation* v. *Rothlein*, 241 F. Supp. 549 (D. Conn. 1964); *Cudahy Company* v. *American Laboratories, Inc.*, 313 F. Supp. 1339 (D. Neb. 1970); and *Republic Systems and Programing, Inc.* v. *Computer Assistance*, 322 F. Supp. 619 (D. Conn. 1970), for several recent examples.

Despite this rather broad statement of the information which is protected, the *Restatement* does make the caveat that:

> "Generally, however, if the improper discovery of the information is to cause harm, the information must be of a secret or confidential character. Thus, if one freely gives full information about the state of his accounts to trade associations, credit agencies or others who request it, the possession, disclosure or use of the same information by one who procured it through improper means can hardly cause him harm. On the other hand, if one has a closely guarded trade secret, another's discovery of it may reduce its sale value even before any other disclosure or use is made of the secret." (*Ibid.*)

Of course, the key point which brings into play the rule stated in Section 759 of the *Restatement* is that the business information or activity must be obtained by a competitor through "improper means." As the *Restatement* points out, this includes such diverse means as "theft, trespass, bribing or otherwise inducing employees or others to reveal the information in breach of duty, fraudulent misrepresentations, threats of harm by unlawful conduct, wire tapping, procuring one's own employees or agents to become employees of the other for purposes of espionage, and so forth." (*Ibid.*)

While the competitor's use of "improper means" is of critical importance, it is readily apparent that this key element is closely related to the "confidentiality" factor noted earlier. This is because if security is maintained over a company's business information and activities, it is highly unlikely that a competitor will be able to obtain the information except through theft, industrial espionage, inducing an employee's breach of his duty to his employer, and the like. As a result, three basic guidelines should be followed by companies, such as Regal and Copperweld, which are seeking to protect their commercial information and processes from competitors:

First, they must themselves treat the information as confidential, which means maintaining reasonable security measures and avoiding disclosure except under controlled circumstances.

Second, they must make every effort to have their employees treat the information as confidential, which means issuing instructions and obtaining agreements to maintain its confidentiality.

Third, they must give as much notice as possible to third parties regarding the confidentiality of the information through appropriate signs and identifying markings.

Although involving slightly different considerations, the company seeking to protect its business interests should also consider obtaining agreements by key employees that they will not compete for a reasonable period of time after the termination of their employment. Otherwise, the law is clear that a former employee is free to enter into competition with his former employer and to use whatever general information he learned concerning the business methods and operations of his former employer. Of course, the former employee is under an obligation not to use or to disclose to his new employer or to other third persons any trade secrets or other matters which he agreed to maintain in confidence. But even as to the latter matters, the employee's obligations should be spelled out in writing. This is because questions may arise as to the exact scope of the employee's undertaking and the courts are likely to lean in favor of the employee absent an explicit agreement on his part.

Turning now to the Regal situation, it is readily apparent that it has failed in the past to meet the three guidelines referred to above. Part of the failing arises from the fact that its basic mill operation is fairly well-known to knowledgeable persons in the trade and thus cannot be classified as involving trade secrets. However, little or no security has been maintained even with regard to those specific matters that could legitimately be considered as confidential to the

company. Thus, there is relatively open access to the plant and to files; there are no sign-in or sign-out procedures; none of the plant areas are marked as "restricted" and few documents are marked as "confidential"; there are no inhibitions on copying or removing documents, etc. Moreover, the company has issued no instructions to nor obtained any agreements from its employees that they will not disclose information when their employment terminates, nor does it have any agreements with key employees restricting their future competition. To remedy this situation, we suggest that the following five-point program be undertaken by management:

1. **Prepare an inventory of matters to be treated as confidential.**

As a first step, Regal should prepare a listing of the business information and processes that it believes should be considered for protection. By way of example, if there are particular mechanical devices or processes, such as the scarfing devices or the mandrels, that it believes are important to its operations and that are not readily available to competitors, these should be identified. The same applies to particular areas in the plant or the office. Thus, it may be desirable to treat the area where new tooling is fabricated as a restricted area. The same may hold true for the office area where tools are designed and should certainly be the case with Bedford Foster's office.

A similar listing should be made of all confidential documents generated within the Regal operation or obtained from other Copperweld divisions. This listing should probably include such items as financial plans, profit and loss statements, customer lists, pricing information and strategies, sources of supply, plant and tooling designs, and the like.

In addition to listing the processes, plant areas and documents to be protected, each should be assigned a priority in terms of its relative confidentiality. Thus, some information may be extremely secret and important to the corporation, whereas other information may merely fall into a class

where it would be nice to keep the information from competitors, but not worth a major effort to do so. The list should also specify by job title the employees who should have access to each piece of business information or plant activity. Obviously, this list should be drawn as narrowly as possible, so as to limit the opportunities for security breaches and to evidence the company's view that the matters are really confidential.

2. Clearly identify all confidential matters as such.

Once a decision is made as to information and activities to be protected, the second step is to identify those matters for employees and outsiders. In the case of the plant as a whole, this may mean fencing the perimeters and posting "Restricted to Authorized Personnel" signs. Inside the plant, areas which are to be treated as "Restricted" should also be clearly marked. The same identification procedures should be followed in the case of file cabinets or other storage areas. Finally, all documents which are to be treated as confidential should be clearly labeled as such. The label should also state the document is the property of Regal Tube and that any use or copying by others is unauthorized. In the case of particularly sensitive documents, it may also be desirable to state that access to the documents is limited to particular individuals or particular groups of individuals.

3. Set up security measures to protect all confidential matters.

In addition to identifying the company's confidential information and activities as such, it is essential that appropriate procedures be set up to insure that the confidentiality is maintained. For the plant as a whole, this should probably involve limiting access, providing locks and guards, and other surveillance devices. In this area, as in a number of others, it may be worthwhile consulting with a professional security firm to ascertain their thoughts regarding appropriate security procedures and equipment.

In addition to setting up security measures for the plant as a whole, procedures should be adopted to insure that all

visitors are signed in and out of the plant. At the time of the sign-in, it would also be desirable to advise visitors that they are entering a "Restricted Area" and that no information obtained may be used or disclosed without appropriate authorization. When visits are arranged for competitors, trade groups, tooling suppliers, etc., it may also be advisable to consider obtaining their agreement to specific restrictions on their use and disclosure of any information.

As to specific sections of the plant which are to be treated as "Restricted Areas", arrangements should be made for locking these areas and restricting access by visitors and employees, except where specifically authorized. The same security measures should be taken with regard to file drawers and other storage areas. Keys should be regularly inventoried and returned when employees either leave or are assigned to other duties. Arrangements should also be made to see that no confidential documents are Xeroxed, except with specific authorization, and that the same applies to removing documents from the building.

4. Issue instructions to, and obtain agreements from employees regarding confidentiality.

All employees should be made fully aware of their confidentiality obligations. Thus, the employee manual should include a specific section outlining the employee's responsibilities and duties in this regard. Among other things, the manual should point out that all information obtained as an employee should be treated in confidence by him and that none of it should be disclosed to third parties except with specific prior authorization. An appropriate person or persons should be designated for the purposes of granting such authorization. In addition, the manual should advise the employee that specific instructions will be issued from time to time regarding access to particular areas and documents. He should be told that he must abide by those specific instructions.

To supplement the employee manual, reminders should be sent to all employees from time to time concerning the

importance of maintaining appropriate security measures. This reminder can be in the form of a reprint of the section of the manual on this subject. Additionally, at the time any employee is terminated or leaves, he should be reminded of his obligations and instructed not to disclose any confidential information to his new employer or others. Where appropriate, the employee should also be advised that violations of these obligations may give rise to legal proceedings against him.

In addition to these steps, consideration should be given to having each new employee sign a specific agreement regarding his confidentiality obligations. This agreement should be simply drawn so that the employee is clear as to what he may or may not do. The signing of the confidentiality agreement should be made a condition of employment.

Beyond these generalized instructions and agreements, specific instructions should be prepared with regard to particularly sensitive matters. For example, persons working on tool and plant design should be given specific instructions concerning those matters that may not be disclosed to outsiders, or even to other employees. Specific instructions should also be given, for example, to sales personnel regarding sales records, pricing practices, etc. Efforts should be made to revise and update these specific instructions from time to time to make certain that they reflect changes in the company's view on what is to be treated in confidence and the security measures to be followed.

5. Obtain non-competition agreements from key employees.

In the case of key management and supervisory personnel, consideration should be given to employment contracts varying with the employee's importance to the company. In general, no contract should be for less than a year. Such contracts will not only preclude the employee from leaving on short notice, but will also bar competitors from seeking to induce them to leave—a prohibition which does not apply where employees have no contract. The employment con-

tracts should contain an express agreement that the employee will not enter into a competing business or use any confidential information following the termination of his employment. The confidentiality agreement can be unlimited; the non-competition agreement must be limited in time and geographic area. Depending upon the importance of the employee and the length of his employment contract, the non-competition clause could probably run up to five years. The geographic area should probably be limited to a 150 to 200 mile radius around the Chicago metropolitan area due to the restrictive view which the Illinois courts have taken towards such non-competition arrangements.

In making the suggestion that employment contracts be considered, I wish to reiterate a point touched on earlier. Only management can determine whether the financial costs involved are worth the advantages to be obtained from the non-competition arrangement. There also may be other considerations to be taken into account, such as the impact which such employment contracts may have on unionization efforts and employee relations.

In conclusion, I wish to note that the foregoing suggestions are far from exclusive. I am sure that you, Phil and Bedford may have other matters that you think should be considered. However, I believe that the foregoing should provide a basic check list to guide the company in obtaining better protection for its confidential business information and activities than has been the case up until now.

I look forward to receiving your comments and suggestion regarding any or all of the foregoing.

Sincerely,

/s/ BILL

William R. Jentes

WRJ:fec

DEFENDANT'S EXHIBIT 168

January 7, 1972

Mr. Robinson

Dave Grohne

You may recall when we merged with Lear Siegler we told them that we would double Regal's fiscal 1967 sales and earnings of $6,821,000 and $960,000, respectively, in three years. Unfortunately, the first half of fiscal 1971 (July 1, 1970 through December 31, 1970) was a very poor period for us, and we therefore did not achieve the goal in our third full year with LSI. Instead it took 3½ years. For the calendar year 1971 which we have just completed, sales were $14,314,000 and earnings before tax and Corporate overhead charges were $2,057,000. Needless to say, I am proud of our accomplishment.

Now for the news, since I am sure the preceeding comes as no big surprise to you. Yesterday LSI signed an agreement with Copperweld Steel to sell them Regal Tube and the sale is scheduled to be completed on February 29. I have been offered a position in Santa Monica functioning as an assistant to Bob Campion, the title for which would be Corporate Secretary to LSI. Also, Copperweld has asked me to continue with them as General Manager of Regal Tube. My present inclination is to tell them both to stick it, but in either event, I'll let you know what happens.

My best regards to both you and Mrs. Robinson. I trust she is in good health and you're too ornery to get sick.

DEFENDANT'S EXHIBIT 168

REGAL TUBE DIVISION
Summary Sales and Earnings Before Tax and LSI Charges

Fiscal Years Ending 1964 through 1972
(000's omitted)

	Sales	Net income before tax Group & Corp. Chgs. $	Net income before tax Group & Corp. Chgs. ROI	Depreciation	Cash flow before tax $	Cash flow before tax ROI	Investment
FY 1964	$ 2,656	173	30.4%	$178	351	61.7%	$ 569
FY 1965	4,874	424	59.3	185	609	85.2	715
FY 1966	6,898	782	75.3	157	939	90.5	1,038
FY 1967	6,821	960	53.3	144	1,104	61.3	1,801
FY 1968	7,111	1,072	48.9	158	1,230	56.1	2,193
FY 1969	6,762	1,014	47.4	124	1,138	53.2	2,138
FY 1970	7,598	761	13.7	225	986	17.8	5,545
FY 1971	11,496	1,314	21.5	352	1,666	27.2	6,121
CY 1971	14,314	2,057	33.9	343	2,400	39.5	6,063
FY 1972*	15,446	2,299	36.1	345	2,644	41.5	6,374

* 6 mos. Actual plus 6 mos. S/T forecast.